

SECOND REGULAR SESSION

[CORRECTED]

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1767

93RD GENERAL ASSEMBLY

Reported from the Committee on Senior Citizen Advocacy March 16, 2006 with recommendation that House Committee Substitute for House Bill No. 1767 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules March 30, 2006 with recommendation that House Committee Substitute for House Bill No. 1767 Do Pass with no time limit for debate.

Taken up for Perfection April 18, 2006. House Committee Substitute for House Bill No. 1767 ordered Perfected and printed, as amended.

STEPHEN S. DAVIS, Chief Clerk

4977L.03P

AN ACT

To repeal sections 192.925, 197.500, 198.006, 198.070, 198.532, 208.909, 210.906, 559.100, 565.180, 565.182, 565.184, 565.188, 565.200, 570.145, 660.050, 660.053, 660.054, 660.055, 660.057, 660.058, 660.060, 660.062, 660.067, 660.069, 660.70, 660.099, 660.250, 660.255, 660.260, 660.261, 660.263, 660.265, 660.270, 660.275, 660.280, 660.285, 660.290, 660.295, 660.300, 660.305, 660.310, 660.315, 660.317, 660.320, 660.321, 660.400, 660.403, 660.405, 660.407, 660.409, 660.411, 660.414, 660.416, 660.418, 660.420, 660.512, 660.620, 660.625, 660.600, 660.603, 660.605, and 660.608, RSMo, and to enact in lieu thereof sixty-nine new sections relating to protections for disabled persons and the elderly, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 192.925, 197.500, 198.006, 198.070, 198.532, 208.909, 210.906,
2 559.100, 565.180, 565.182, 565.184, 565.188, 565.200, 570.145, 660.050, 660.053, 660.054,
3 660.055, 660.057, 660.058, 660.060, 660.062, 660.067, 660.069, 660.70, 660.099, 660.250,
4 660.255, 660.260, 660.261, 660.263, 660.265, 660.270, 660.275, 660.280, 660.285, 660.290,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

5 660.295, 660.300, 660.305, 660.310, 660.315, 660.317, 660.320, 660.321, 660.400 ,660.403,
6 660.405, 660.407, 660.409, 660.411, 660.414, 660.416, 660.418, 660.420, 660.512, 660.620,
7 660.625, 660.600, 660.603, 660.605, and 660.608, RSMo, are repealed and sixty-nine new
8 sections enacted in lieu thereof, to be known as sections 192.925, 192.2000, 192.2001, 192.2003,
9 192.2006, 192.2009, 192.2012, 192.2015, 192.2025, 192.2030, 192.2033, 192.2035, 192.2040,
10 192.2100, 192.2103, 192.2106, 192.2109, 192.2112, 192.2115, 192.2118, 192.2121, 192.2124,
11 192.2127, 192.2130, 192.2150, 192.2153, 192.2175, 192.2178, 192.2181, 192.2184, 192.2187,
12 192.2200, 192.2203, 192.2206, 192.2209, 192.2212, 192.2215, 192.2218, 192.2221, 192.2224,
13 192.2227, 192.2250, 192.2253, 198.006, 198.532, 198.700, 198.703, 198.705, 198.708, 208.909,
14 210.906, 407.991, 407.992, 407.993, 407.995, 407.996, 442.700, 442.703, 442.706, 442.709,
15 442.712, 559.100, 565.180, 565.182, 565.184, 565.188, 565.200, 565.320, and 570.145, to read
16 as follows:

192.925. 1. To increase public awareness of the problem of elder abuse and neglect **and**
2 **financial exploitation of the elderly**, the department of health and senior services shall
3 implement an education and awareness program. Such program shall have the goal of reducing
4 the incidences of elder abuse and neglect **and financial exploitation of the elderly**, and may
5 focus on:

6 (1) The education and awareness of mandatory reporters on their responsibility to report
7 elder abuse and neglect **and financial exploitation of the elderly**;

8 (2) Targeted education and awareness for the public on the problem, identification and
9 reporting of elder abuse and neglect **and financial exploitation of the elderly**;

10 (3) Publicizing the elder abuse and neglect hot line telephone number;

11 (4) Education and awareness for law enforcement agencies and prosecutors on the
12 problem and identification of elder abuse and neglect **and financial exploitation of the elderly**,
13 and the importance of prosecuting cases pursuant to chapter 565, RSMo; and

14 (5) Publicizing the availability of background checks prior to hiring an individual for
15 caregiving purposes.

16 2. The department of social services and facilities licensed pursuant to chapters 197 and
17 198, RSMo, shall cooperate fully with the department of health and senior services in the
18 distribution of information pursuant to this program.

[660.050.] **192.2000.** 1. The "Division of Aging" is hereby transferred from the
2 department of social services to the department of health and senior services by a type I transfer
3 as defined in the Omnibus State Reorganization Act of 1974. **All references in the revised**
4 **statutes of Missouri to the division of aging shall include any division or divisions**
5 **established by the department as a successor division or divisions to the division of aging.**
6 The division shall aid and assist the elderly and low-income handicapped adults living in the

7 state of Missouri to secure and maintain maximum economic and personal independence and
8 dignity. The division shall regulate adult long-term care facilities pursuant to the laws of this
9 state and rules and regulations of federal and state agencies, to safeguard the lives and rights of
10 residents in these facilities.

11 2. In addition to its duties and responsibilities enumerated pursuant to other provisions
12 of law, the division shall:

13 (1) Serve as advocate for the elderly by promoting a comprehensive, coordinated service
14 program through administration of Older Americans Act (OAA) programs (Title III) P.L. 89-73,
15 (42 U.S.C. 3001, et seq.), as amended;

16 (2) Assure that an information and referral system is developed and operated for the
17 elderly, including information on the Missouri care options program;

18 (3) Provide technical assistance, planning and training to local area agencies on aging;

19 (4) Contract with the federal government to conduct surveys of long-term care facilities
20 certified for participation in the Title XVIII program;

21 (5) Serve as liaison between the department of health and senior services and the Federal
22 Health Standards and Quality Bureau, as well as the Medicare and Medicaid portions of the
23 United States Department of Health and Human Services;

24 (6) Conduct medical review (inspections of care) activities such as utilization reviews,
25 independent professional reviews, and periodic medical reviews to determine medical and social
26 needs for the purpose of eligibility for Title XIX, and for level of care determination;

27 (7) Certify long-term care facilities for participation in the Title XIX program;

28 (8) Conduct a survey and review of compliance with P.L. 96-566 Sec. 505(d) for
29 Supplemental Security Income recipients in long-term care facilities and serve as the liaison
30 between the Social Security Administration and the department of health and senior services
31 concerning Supplemental Security Income beneficiaries;

32 (9) Review plans of proposed long-term care facilities before they are constructed to
33 determine if they meet applicable state and federal construction standards;

34 (10) Provide consultation to long-term care facilities in all areas governed by state and
35 federal regulations;

36 (11) Serve as the central state agency with primary responsibility for the planning,
37 coordination, development, and evaluation of policy, programs, and services for elderly persons
38 in Missouri consistent with the provisions of subsection 1 of this section and serve as the
39 designated state unit on aging, as defined in the Older Americans Act of 1965;

40 (12) With the advice of the governor's advisory council on aging, develop long-range
41 state plans for programs, services, and activities for elderly and handicapped persons. State plans

42 should be revised annually and should be based on area agency on aging plans, statewide
43 priorities, and state and federal requirements;

44 (13) Receive and disburse all federal and state funds allocated to the division and solicit,
45 accept, and administer grants, including federal grants, or gifts made to the division or to the
46 state for the benefit of elderly persons in this state;

47 (14) Serve, within government and in the state at large, as an advocate for elderly
48 persons by holding hearings and conducting studies or investigations concerning matters
49 affecting the health, safety, and welfare of elderly persons and by assisting elderly persons to
50 assure their rights to apply for and receive services and to be given fair hearings when such
51 services are denied;

52 (15) Provide information and technical assistance to the governor's advisory council on
53 aging and keep the council continually informed of the activities of the division;

54 (16) After consultation with the governor's advisory council on aging, make
55 recommendations for legislative action to the governor and to the general assembly;

56 (17) Conduct research and other appropriate activities to determine the needs of elderly
57 persons in this state, including, but not limited to, their needs for social and health services, and
58 to determine what existing services and facilities, private and public, are available to elderly
59 persons to meet those needs;

60 (18) Maintain and serve as a clearinghouse for up-to-date information and technical
61 assistance related to the needs and interests of elderly persons and persons with Alzheimer's
62 disease or related dementias, including information on the Missouri care options program,
63 dementia-specific training materials and dementia-specific trainers. Such dementia-specific
64 information and technical assistance shall be maintained and provided in consultation with
65 agencies, organizations and/or institutions of higher learning with expertise in dementia care;

66 (19) Provide area agencies on aging with assistance in applying for federal, state, and
67 private grants and identifying new funding sources;

68 (20) Determine area agencies on aging annual allocations for Title XX and Title III of
69 the Older Americans Act expenditures;

70 (21) Provide transportation services, home-delivered and congregate meals, in-home
71 services, counseling and other services to the elderly and low-income handicapped adults as
72 designated in the Social Services Block Grant Report, through contract with other agencies, and
73 shall monitor such agencies to ensure that services contracted for are delivered and meet
74 standards of quality set by the division;

75 (22) Monitor the process pursuant to the federal Patient Self-determination Act, 42
76 U.S.C. 1396a (w), in long-term care facilities by which information is provided to patients
77 concerning durable powers of attorney and living wills.

78 3. The division director, subject to the supervision of the director of the department of
79 health and senior services, shall be the chief administrative officer of the division and shall
80 exercise for the division the powers and duties of an appointing authority pursuant to chapter 36,
81 RSMo, to employ such administrative, technical and other personnel as may be necessary for the
82 performance of the duties and responsibilities of the division.

83 4. The division may withdraw designation of an area agency on aging only when it can
84 be shown the federal or state laws or rules have not been complied with, state or federal funds
85 are not being expended for the purposes for which they were intended, or the elderly are not
86 receiving appropriate services within available resources, and after consultation with the director
87 of the area agency on aging and the area agency board. Withdrawal of any particular program
88 of services may be appealed to the director of the department of health and senior services and
89 the governor. In the event that the division withdraws the area agency on aging designation in
90 accordance with the Older Americans Act, the division shall administer the services to clients
91 previously performed by the area agency on aging until a new area agency on aging is designated.

92 5. Any person hired by the department of health and senior services after August 13,
93 1988, to conduct or supervise inspections, surveys or investigations pursuant to chapter 198,
94 RSMo, shall complete at least one hundred hours of basic orientation regarding the inspection
95 process and applicable rules and statutes during the first six months of employment. Any such
96 person shall annually, on the anniversary date of employment, present to the department evidence
97 of having completed at least twenty hours of continuing education in at least two of the following
98 categories: communication techniques, skills development, resident care, or policy update. The
99 department of health and senior services shall by rule describe the curriculum and structure of
100 such continuing education.

101 6. The division may issue and promulgate rules to enforce, implement and effectuate the
102 powers and duties established in this section [and sections 198.070 and 198.090, RSMo, and
103 sections 660.250 and 660.300 to 660.320] , **section 192.2100 and sections 192.2175 to**
104 **192.2187, and section 198.090, RSMo.** Any rule or portion of a rule, as that term is defined in
105 section 536.010, RSMo, that is created under the authority delegated in this section shall become
106 effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo,
107 and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are
108 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,
109 RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently
110 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
111 after August 28, 2001, shall be invalid and void.

7. Missouri care options is a program, operated and coordinated by the [division of aging] **department**, which informs individuals of the variety of care options available to them when they may need long-term care.

8. The division shall, by January 1, 2002, establish minimum dementia-specific training requirements for employees involved in the delivery of care to persons with Alzheimer's disease or related dementias who are employed by skilled nursing facilities, intermediate care facilities, residential care facilities, agencies providing in-home care services authorized by the [division of aging] **department**, adult day-care programs, independent contractors providing direct care to persons with Alzheimer's disease or related dementias and the [division of aging] **department**. Such training shall be incorporated into new employee orientation and ongoing in-service curricula for all employees involved in the care of persons with dementia. The department of health and senior services shall, by January 1, 2002, establish minimum dementia-specific training requirements for employees involved in the delivery of care to persons with Alzheimer's disease or related dementias who are employed by home health and hospice agencies licensed by chapter 197, RSMo. Such training shall be incorporated into the home health and hospice agency's new employee orientation and ongoing in-service curricula for all employees involved in the care of persons with dementia. The dementia training need not require additional hours of orientation or ongoing in-service. Training shall include at a minimum, the following:

(1) For employees providing direct care to persons with Alzheimer's disease or related dementias, the training shall include an overview of Alzheimer's disease and related dementias, communicating with persons with dementia, behavior management, promoting independence in activities of daily living, and understanding and dealing with family issues;

(2) For other employees who do not provide direct care for, but may have daily contact with, persons with Alzheimer's disease or related dementias, the training shall include an overview of dementias and communicating with persons with dementia.

As used in this subsection, the term "employee" includes persons hired as independent contractors. The training requirements of this subsection shall not be construed as superceding any other laws or rules regarding dementia-specific training.

[660.060.] **192.2001.** All authority, powers, duties, functions, records, personnel, property, contracts, budgets, matters pending and other pertinent vestiges of the division of aging shall be transferred to the department of health and senior services.

[660.053.] **192.2003.** As used in [section 199.025, RSMo, and sections 660.050 to 660.057 and 660.400 to 660.420] **sections 192.2000 to 192.2012 and sections 192.2200 to 192.2227**, the following terms mean:

- 4 (1) "Area agency on aging", the agency designated by the division in a planning and
5 service area to develop and administer a plan and administer available funds for a comprehensive
6 and coordinated system of services for the elderly and persons with disabilities who require
7 similar services;
- 8 (2) "Area agency board", the local policy-making board which directs the actions of the
9 area agency on aging under state and federal laws and regulations;
- 10 (3) "Director", the director of the division of aging of the Missouri department of [social]
11 **health and senior** services;
- 12 (4) "Division", the division of aging of the Missouri department of [social] **health and**
13 **senior** services;
- 14 (5) "Elderly" or "elderly persons", persons who are sixty years of age or older;
- 15 (6) "Disability", a mental or physical impairment that substantially limits one or more
16 major life activities, whether the impairment is congenital or acquired by accident, injury or
17 disease, where such impairment is verified by medical findings;
- 18 (7) "Local government", a political subdivision of the state whose authority is general
19 or a combination of units of general purpose local governments;
- 20 (8) "Major life activities", functions such as caring for one's self, performing manual
21 tasks, walking, seeing, hearing, speaking, breathing, learning, and working;
- 22 (9) "Medicaid", medical assistance provided under section 208.151, RSMo, et seq., in
23 compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social Security Act (42
24 U.S.C. 301 et seq.), as amended;
- 25 (10) "Protective services", a service provided by the [Missouri division of aging]
26 **department** in response to the need for protection from harm or neglect to eligible adults under
27 sections [660.250 to 660.295] **192.2100 to 192.2130**;
- 28 (11) "Registered caregiver", a person who provides primary long-term care for an elderly
29 person and wishes to receive information, services or support from the shared care program;
- 30 (12) "Shared care", a program administered by the [division of aging] **department** in
31 which Missouri families who provide primary long-term care for an elderly person and register
32 as a shared care member with the [division of aging] **department** shall receive access to certain
33 supportive services and may receive a state tax credit;
- 34 (13) "Shared care community project", a project in a community that offers to help
35 support shared care participation through development of programs;
- 36 (14) "Shared care member", a registered caregiver or shared care provider who registers
37 with the [division of aging] **department** in order to participate in the shared care program;
- 38 (15) "Shared care provider", any state authorized long-term care provider in the state,
39 including, but not limited to, in-home, home health, hospice, adult day care, residential care

40 facility I or II, or nursing home, who voluntarily registers with the [division of aging]
41 **department** to be available as a resource for the shared care program;

42 (16) "Shared care tax credit", a tax credit to registered caregivers who meet the
43 requirements of section [660.055] **192.2009**.

[660.054.] **192.2006**. 1. The [division of aging of the] department of [social] **health and**
2 **senior** services shall establish a program to help families who provide the primary long-term care
3 for an elderly person. This program shall be known as "shared care" and has the following goals:

4 (1) To provide services and support for families caring for an elderly person;

5 (2) To increase awareness of the variety of privately funded services which may be
6 available to those persons caring for an elderly person;

7 (3) To increase awareness of the variety of government services which may be available
8 to those caring for an elderly person;

9 (4) Recognition on an annual basis by the governor for those families participating in the
10 shared care program and community project groups participating in the shared care program;

11 (5) To provide a tax credit to members who meet the qualifications pursuant to section
12 [660.055] **192.2009**; and

13 (6) To promote community involvement by:

14 (a) Providing local communities information about the shared care program and to
15 encourage the establishment of support groups where none are available and to support existing
16 support groups, and other programs for shared care members and providers to share ideas,
17 information and resources on caring for an elderly person; and

18 (b) Encouraging local home care, adult day care or other long-term care providers, who
19 have regularly scheduled training sessions for paid caregivers, to voluntarily invite shared care
20 members to participate in education and training sessions at no cost to the registered caregivers.
21 Such providers shall not be held liable in any civil or criminal action related to or arising out of
22 the participation or training of shared care members in such sessions.

23 2. To further the goals of the shared care program, the director shall:

24 (1) Promulgate specific rules and procedures for the shared care program. Any rule or
25 portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the
26 authority delegated in sections [660.050 to 660.057] **192.2000 to 192.2012** shall become
27 effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo,
28 and, if applicable, section 536.028, RSMo. All rulemaking authority delegated prior to August
29 28, 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted to
30 repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully
31 complied with all applicable provisions of law. This section and chapter 536, RSMo, are
32 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536,

33 RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently
34 held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
35 after August 28, 1999, shall be invalid and void;

36 (2) Maintain a registry of names and addresses of shared care members and shared care
37 providers;

38 (3) Compile a list, updated annually, of public and private resources, services and
39 programs which may be available to assist and support the registered caregiver with caring for
40 the elderly. Such list shall be given to shared care members along with information on shared
41 care providers in their community. Private organizations and providers shall be responsible for
42 providing information to the [division of aging] **department** for inclusion on the list. The
43 [division of aging] **department** shall establish reporting procedures for private organizations and
44 publicly disseminate the [division's] **department's** guidelines statewide;

45 (4) Compile and distribute to shared care members information about the services and
46 benefits of the shared care program and a bibliography of resources and materials with
47 information helpful to such members. The bibliography will give members an overview of
48 available information and is not required to be comprehensive;

49 (5) Encourage shared care providers, consumer groups, churches and other philanthropic
50 organizations to help local communities develop local support systems where none are available
51 and to support existing support groups for persons caring for elderly persons and make [division]
52 **department** staff available, if possible;

53 (6) In conjunction with the director of revenue, develop a physician certification for
54 shared care tax credit form to be given to registered caregivers upon request. The form shall
55 require, but is not limited to:

56 (a) Identifying information about the registered caregiver for tax purposes, and the
57 signature of the registered caregiver certifying that he or she qualifies for the shared care tax
58 credit as provided in section [660.055] **192.2009**;

59 (b) Identifying information about the elderly person receiving care for verification
60 purposes;

61 (c) Identifying information about and the signature of the physician licensed pursuant
62 to the provisions of chapter 334, RSMo, for verification and certification purposes;

63 (d) A description by such physician of the physical or mental condition of the elderly
64 person that makes them incapable of living alone and lists the care, assistance with daily living
65 and oversight needed at home in order to prevent placement in a facility licensed pursuant to
66 chapter 198, RSMo; and

67 (e) A complete explanation of the shared care tax credit and its guidelines and directions
68 on completion of the form and how to file for the shared care tax credit with the department of
69 revenue; and

70 (7) In conjunction with the director of revenue, develop a division of aging certification
71 for shared care tax credit form to be given at the request of the registered caregivers when a
72 division of aging assessment has been completed for other purposes. The form shall require, but
73 is not limited to:

74 (a) Identifying information about the registered caregiver for tax purposes, and the
75 signature of the registered caregiver certifying that he or she qualifies for the shared care tax
76 credit as provided in section [660.055] **192.2009**;

77 (b) Identifying information about the elderly person receiving care for verification
78 purposes;

79 (c) Identifying information about and the signature of the [division of aging] **department**
80 staff for verification and certification purposes;

81 (d) A description by the [division of aging] **department** staff of the physical or mental
82 condition of the elderly person that makes them incapable of living alone and lists the care,
83 assistance with daily living and oversight needed at home in order to prevent placement in a
84 facility licensed pursuant to chapter 198, RSMo; and

85 (e) A complete explanation of the shared care tax credit and its guidelines and directions
86 for completing the form and how to file for the shared care tax credit with the department of
87 revenue.

88 3. Funds appropriated for the shared care program shall be appropriated to and
89 administered by the department of [social] **health and senior** services.

[660.055.] **192.2009**. 1. Any registered caregiver who meets the requirements of this
2 section shall be eligible for a shared care tax credit in an amount not to exceed five hundred
3 dollars to defray the cost of caring for an elderly person. In order to be eligible for a shared care
4 tax credit, a registered caregiver shall:

5 (1) Care for an elderly person, age sixty or older, who:

6 (a) Is physically or mentally incapable of living alone, as determined and certified by his
7 or her physician licensed pursuant to chapter 334, RSMo, or by the [division of aging]
8 **department** staff when an assessment has been completed for the purpose of qualification for
9 other services; and

10 (b) Requires assistance with activities of daily living to the extent that without care and
11 oversight at home would require placement in a facility licensed pursuant to chapter 198, RSMo;
12 and

13 (c) Under no circumstances, is able or allowed to operate a motor vehicle; and

14 (d) Does not receive funding or services through Medicaid or social services block grant
15 funding;

16 (2) Live in the same residence to give protective oversight for the elderly person meeting
17 the requirements described in subdivision (1) of this subsection for an aggregate of more than
18 six months per tax year;

19 (3) Not receive monetary compensation for providing care for the elderly person meeting
20 the requirements described in subdivision (1) of this subsection; and

21 (4) File the original completed and signed physician certification for shared care tax
22 credit form or the original completed and signed [division of aging] **department** certification
23 for shared care tax credit form provided for in subsection 2 of section [660.054] **192.2006** along
24 with such caregiver's Missouri individual income tax return to the department of revenue.

25 2. The tax credit allowed by this section shall apply to any year beginning after
26 December 31, 1999.

27 3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that
28 is created under the authority delegated in sections [660.050 to 660.057] **192.2000 to 192.2012**
29 shall become effective only if it complies with and is subject to all of the provisions of chapter
30 536, RSMo, and, if applicable, section 536.028, RSMo. All rulemaking authority delegated prior
31 to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be
32 interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999,
33 if it fully complied with all applicable provisions of law. This section and chapter 536, RSMo,
34 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter
35 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are
36 subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed
37 or adopted after August 28, 1999, shall be invalid and void.

38 4. Any person who knowingly falsifies any document required for the shared care tax
39 credit shall be subject to the same penalties for falsifying other tax documents as provided in
40 chapter 143, RSMo.

[660.057.] **192.2012.** 1. On and after August 13, 1984, an area agency on aging shall
2 operate with local administrative responsibility for Title III of the Older Americans Act, and
3 other funds allocated to it by the [division] **department**. The area agency board shall be
4 responsible for all actions of an area agency on aging in its jurisdiction, including, but not limited
5 to, the accountability for funds and compliance with federal and state laws and rules. Such
6 responsibility shall include all geographic areas in which the area agency on aging is designated
7 to operate. The respective area agency board shall appoint a director of the area agency on aging
8 in its jurisdiction. [Beginning January 1, 1995,] The director of the area agency on aging shall
9 submit an annual performance report to the [division] **department** director, the speaker of the

10 house of representatives, the president pro tempore of the senate and the governor. Such
11 performance report shall give a detailed accounting of all funds which were available to and
12 expended by the area agency on aging from state, federal and private sources.

13 2. Each area agency on aging shall have an area agency on aging advisory council, which
14 shall:

15 (1) Recommend basic policy guidelines for the administration of the activities of the area
16 agencies on aging on behalf of elderly persons and advise the area agency on aging on questions
17 of policy;

18 (2) Advise the area agency on aging with respect to the development of the area plan and
19 budget, and review and comment on the completed area plan and budget before its transmittal
20 to the [division] **department**;

21 (3) Review and evaluate the effectiveness of the area agency on aging in meeting the
22 needs of elderly persons in the planning and service area;

23 (4) Meet at least quarterly, with all meetings being subject to sections 610.010 to
24 610.030, RSMo.

25 3. Each area agency board shall:

26 (1) Conduct local planning functions for Title III and Title XX, and such other funds as
27 may be available;

28 (2) Develop a local plan for service delivery, subject to review and approval by the
29 [division] **department**, that complies with federal and state requirements and in accord with
30 locally determined objectives consistent with the state policy on aging;

31 (3) Assess the needs of elderly persons within the planning and service delivery area for
32 service for social and health services, and determine what resources are currently available to
33 meet those needs;

34 (4) Assume the responsibility of determining services required to meet the needs of
35 elderly persons, assure that such services are provided within the resources available, and
36 determine when such services are no longer needed;

37 (5) Endeavor to coordinate and expand existing resources in order to develop within its
38 planning and service area a comprehensive and coordinated system for the delivery of social and
39 health services to elderly persons;

40 (6) Serve as an advocate within government and within the community at large for the
41 interests of elderly persons within its planning and service area;

42 (7) Make grants to or enter into contracts with any public or private agency for the
43 provision of social or health services not otherwise sufficiently available to elderly persons
44 within the planning and service area;

45 (8) Monitor and evaluate the activities of its service providers to ensure that the services
46 being provided comply with the terms of the grant or contract. Where a provider is found to be
47 in breach of the terms of its grant or contract, the area agency shall enforce the terms of the grant
48 or contract;

49 (9) Conduct research, evaluation, demonstration or training activities appropriate to the
50 achievement of the goal of improving the quality of life for elderly persons within its planning
51 and service area;

52 (10) Comply with [division] **department** requirements that have been developed in
53 consultation with the area agencies for client and fiscal information, and provide to the [division]
54 **department** information necessary for federal and state reporting, program evaluation, program
55 management, fiscal control and research needs.

56 4. [Beginning January 1, 1995,] The records of each area agency on aging shall be
57 audited at least every other year. All audits required by the Older Americans Act of 1965, as
58 amended, shall satisfy this requirement.

[660.058.] **192.2015.** 1. The [division of aging] **department** shall provide budget
2 allotment tables to each area agency on aging by January first of each year. Each area agency on
3 aging shall submit its area plan, area budget and service contracts to the [division of aging]
4 **department** by March first of each year. Each April, the area agencies on aging shall present
5 their plans to the [division of aging] **department** in a public hearing scheduled by the [division]
6 **department** and held in the area served by the area agency on aging. Within thirty days of such
7 hearing, the [division] **department** shall report findings and recommendations to the board of
8 directors for the area agency on aging, the area agency on aging advisory council, the members
9 of the senate budget committee and the members of the house appropriations committee for
10 social services and corrections.

11 2. Each area agency on aging shall include in its area plan performance measures and
12 outcomes to be achieved for each year covered by the plan. Such measures and outcomes shall
13 also be presented to the [division] **department** during the public hearing.

14 3. The [division of aging] **department** shall conduct on-site monitoring of each area
15 agency on aging at least once a year. The [division of aging] **department** shall send all
16 monitoring reports to the area agency on aging advisory council and the board of directors for
17 the area agency which is the subject of the reports.

[660.062.] **192.2025.** 1. There is hereby created a "State Board of Senior Services"
2 which shall consist of seven members, who shall be appointed by the governor, by and with the
3 advice and consent of the senate. No member of the state board of senior services shall hold any
4 other office or employment under the state of Missouri other than in a consulting status relevant

5 to the member's professional status, licensure or designation. Not more than four of the members
6 of the state board of senior services shall be from the same political party.

7 2. Each member shall be appointed for a term of four years; except that of the members
8 first appointed, two shall be appointed for a term of one year, two for a term of two years, two
9 for a term of three years and one for a term of four years. The successors of each shall be
10 appointed for full terms of four years. No person may serve on the state board of senior services
11 for more than two terms. The terms of all members shall continue until their successors have
12 been duly appointed and qualified. One of the persons appointed to the state board of senior
13 services shall be a person currently working in the field of gerontology. One of the persons
14 appointed to the state board of senior services shall be a physician with expertise in geriatrics.
15 One of the persons appointed to the state board of senior services shall be a person with expertise
16 in nutrition. One of the persons appointed to the state board of senior services shall be a person
17 with expertise in rehabilitation services of persons with disabilities. One of the persons
18 appointed to the state board of senior services shall be a person with expertise in mental health
19 issues. In making the two remaining appointments, the governor shall give consideration to
20 individuals having a special interest in gerontology or disability-related issues, including senior
21 citizens. Four of the seven members appointed to the state board of senior services shall be
22 members of the governor's advisory council on aging. If a vacancy occurs in the appointed
23 membership, the governor may appoint a member for the remaining portion of the unexpired
24 term created by the vacancy. The members shall receive actual and necessary expenses plus
25 twenty-five dollars per day for each day of actual attendance.

26 3. The board shall elect from among its membership a chairman and a vice chairman,
27 who shall act as chairman in his or her absence. The board shall meet at the call of the chairman.
28 The chairman may call meetings at such times as he or she deems advisable, and shall call a
29 meeting when requested to do so by three or more members of the board.

30 4. The state board of senior services shall advise the department of health and senior
31 services in the:

32 (1) Promulgation of rules and regulations by the department of health and senior
33 services;

34 (2) Formulation of the budget for the department of health and senior services; and

35 (3) Planning for and operation of the department of health and senior services.

 [660.067.] **192.2030.** As used in sections [660.067 to 660.070] **192.2030 to 192.2035,**
2 the following terms shall mean:

3 (1) "Adult day care", a group program that emphasizes appropriate services for persons
4 eighteen years of age or older having Alzheimer's disease and related disorders and that provides

5 services for periods of less than twenty-four hours but more than two hours per day in a place
6 other than the adult's home;

7 (2) "Alzheimer's disease and related disorders", diseases resulting from significant
8 destruction of brain tissue and characterized by a decline of memory and other intellectual
9 functions. These diseases include but are not limited to progressive, degenerative and dementing
10 illnesses such as presenile and senile dementias, Alzheimer's disease and other related disorders;

11 (3) "Appropriate services", services that emphasize surveillance, safety, behavior
12 management and other techniques used to assist persons having Alzheimer's disease and related
13 disorders;

14 (4) "Director", the director of the division of aging of the department of [social] **health**
15 **and senior** services;

16 (5) "Division", the division of aging of the department of [social] **health and senior**
17 services;

18 (6) "In-home companion", someone trained to provide appropriate services to persons
19 having Alzheimer's disease and related disorders and who provides those services in the home;

20 (7) "Respite care", a program that provides temporary and short-term residential care,
21 sustenance, supervision and other appropriate services for persons having Alzheimer's disease
22 and related disorders who otherwise reside in their own or in a family home.

[660.069.] **192.2033.** 1. To encourage development of appropriate services for persons
2 having Alzheimer's disease and related disorders, the [division] **department** may make grants
3 to public and private entities for pilot projects from funds specifically appropriated for this
4 purpose. Pilot projects shall have the following goals:

5 (1) To prevent or postpone institutionalization of persons having Alzheimer's disease and
6 related disorders who currently live in their own home or in a family home;

7 (2) To offer services that emphasize safety, surveillance and behavior management rather
8 than, or in addition to, medical treatment, homemaker, chore or personal care services;

9 (3) To temporarily relieve family members or others who have assumed direct care
10 responsibilities by offering services that allow care givers to leave the home. These services
11 shall include but not be limited to adult day care, in-home companions and respite care;

12 (4) To test the practical and economic feasibility of providing services in settings and
13 at levels designed for varying needs; and

14 (5) To develop program models that can be adapted and operated by other public and
15 private entities.

16 2. The director, in accordance with chapter 536, RSMo, shall promulgate rules that
17 establish procedures for grant application, review, selection, monitoring and auditing of grants
18 made [pursuant to sections 660.067 to 660.070] **under this section and section 192.2035.**

19 3. The grants shall be limited to a duration of one year but may be renewable for one
20 additional year at the director's discretion and if funds are appropriated for this purpose.

 [660.070.] **192.2035.** The commissioner of administration, in consultation with the
2 director of the [division of aging] **department**, shall promulgate rules that establish procedures
3 for contracting with grantees receiving funds under [sections 660.067 to 660.070] **this section**
4 **and section 192.2033.** No rule or portion of a rule promulgated under the authority of sections
5 660.067 to 660.070 shall become effective unless it has been promulgated pursuant to the
6 provisions of section 536.024, RSMo.

 [660.099.] **192.2040.** 1. The general assembly may appropriate funds in addition to the
2 amount currently being provided per annum for nutrition services for the elderly. Funds so
3 designated to provide nutrition services for the elderly shall be allocated to the [Missouri division
4 of aging] **department** to be placed on the formula basis and distributed to each area agency on
5 aging throughout the state of Missouri.

6 2. The general assembly may appropriate funds in addition to the amount currently being
7 provided per annum through the Missouri elderly and handicapped transportation program.
8 Funds so designated to provide transportation for the elderly and developmentally disabled shall
9 be allocated to the [Missouri division of aging] **department** to be placed on the formula basis
10 and distributed to each area agency on aging throughout the state of Missouri.

11 3. The general assembly may appropriate funds in addition to the amount currently being
12 provided per annum for home-delivered meals for the elderly. Such additional funds shall be
13 allocated to the [Missouri division of aging] **department** to be placed on the formula basis and
14 distributed to each area agency on aging throughout the state of Missouri.

 [660.250.] **192.2100.** As used in sections [660.250 to 660.321] **192.2100 to 192.2130**
2 **and sections 192.2175 to 192.2187,** the following terms mean:

3 (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm including
4 financial exploitation by any person, firm or corporation;

5 (2) "Court", the circuit court;

6 (3) "Department", the department of health and senior services;

7 (4) "Director", director of the department of health and senior services or his or her
8 designees;

9 (5) "Eligible adult", a person sixty years of age or older who is unable to protect his or
10 her own interests or adequately perform or obtain services which are necessary to meet his or her
11 essential human needs or an adult with a disability, as defined in section [660.053] **192.2003,**
12 between the ages of eighteen and fifty-nine who is unable to protect his or her own interests or
13 adequately perform or obtain services which are necessary to meet his or her essential human
14 needs;

- 15 (6) "Home health agency", the same meaning as such term is defined in section 197.400,
16 RSMo;
- 17 (7) "Home health agency employee", a person employed by a home health agency;
- 18 (8) "Home health patient", an eligible adult who is receiving services through any home
19 health agency;
- 20 (9) "In-home services client", an eligible adult who is receiving services in his or her
21 private residence through any in-home services provider agency;
- 22 (10) "In-home services employee", a person employed by an in-home services provider
23 agency;
- 24 (11) "In-home services provider agency", a business entity under contract with the
25 department or with a Medicaid participation agreement, which employs persons to deliver any
26 kind of services provided for eligible adults in their private homes;
- 27 (12) "Least restrictive environment", a physical setting where protective services for the
28 eligible adult and accommodation is provided in a manner no more restrictive of an individual's
29 personal liberty and no more intrusive than necessary to achieve care and treatment objectives;
- 30 (13) "Likelihood of serious physical harm", one or more of the following:
- 31 (a) A substantial risk that physical harm to an eligible adult will occur because of his or
32 her failure or inability to provide for his or her essential human needs as evidenced by acts or
33 behavior which has caused such harm or which gives another person probable cause to believe
34 that the eligible adult will sustain such harm;
- 35 (b) A substantial risk that physical harm will be inflicted by an eligible adult upon
36 himself or herself, as evidenced by recent credible threats, acts, or behavior which has caused
37 such harm or which places another person in reasonable fear that the eligible adult will sustain
38 such harm;
- 39 (c) A substantial risk that physical harm will be inflicted by another upon an eligible
40 adult as evidenced by recent acts or behavior which has caused such harm or which gives another
41 person probable cause to believe the eligible adult will sustain such harm;
- 42 (d) A substantial risk that further physical harm will occur to an eligible adult who has
43 suffered physical injury, neglect, sexual or emotional abuse, or other maltreatment or wasting
44 of his or her financial resources by another person;
- 45 (14) "Neglect", the failure to provide services to an eligible adult by any person, firm or
46 corporation with a legal or contractual duty to do so, when such failure presents either an
47 imminent danger to the health, safety, or welfare of the client or a substantial probability that
48 death or serious physical harm would result;

49 (15) "Protective services", services provided by the state or other governmental or private
50 organizations or individuals which are necessary for the eligible adult to meet his or her essential
51 human needs.

[660.255.] **192.2103.** 1. Any person having reasonable cause to suspect that an eligible
2 adult presents a likelihood of suffering serious physical harm and is in need of protective services
3 shall report such information to the department.

4 2. The report shall be made orally or in writing. It shall include, if known:

5 (1) The name, age, and address of the eligible adult;

6 (2) The name and address of any person responsible for the eligible adult's care;

7 (3) The nature and extent of the eligible adult's condition; and

8 (4) Other relevant information.

9 3. Reports regarding persons determined not to be eligible adults as defined in section
10 660.250 shall be referred to the appropriate state or local authorities.

11 4. The department shall maintain a statewide toll free phone number for receipt of
12 reports.

[660.260.] **192.2106.** 1. Upon receipt of a report, the department shall make a prompt
2 and thorough investigation to determine whether or not an eligible adult is facing a likelihood
3 of serious physical harm and is in need of protective services. The department shall provide for
4 any of the following:

5 (1) Identification of the eligible adult and determination that the eligible adult is eligible
6 for services;

7 (2) Evaluation and diagnosis of the needs of eligible adults;

8 (3) Provision of social casework, counseling or referral to the appropriate local or state
9 authority;

10 (4) Assistance in locating and receiving alternative living arrangements as necessary;

11 (5) Assistance in locating and receiving necessary protective services; or

12 (6) The coordination and cooperation with other state agencies and public and private
13 agencies in exchange of information and the avoidance of duplication of services.

14 [660.261.] **2.** Upon receipt of a report that an eligible adult between the ages of eighteen
15 and fifty-nine is facing a likelihood of serious physical harm, the department shall:

16 (1) Investigate or refer the report to appropriate law enforcement or state agencies; and

17 (2) Provide services or refer to local community or state agencies.

[660.263.] **192.2109.** 1. Reports made pursuant to sections [660.250 to 660.295]
2 **192.2100 to 192.2130** shall be confidential and shall not be deemed a public record and shall not
3 be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo.

4 2. Such reports shall be accessible for examination and copying only to the following
5 persons or offices, or to their designees:

- 6 (1) The department or any person or agency designated by the department;
7 (2) The attorney general;
8 (3) The department of mental health for persons referred to that department;
9 (4) Any appropriate law enforcement agency; and
10 (5) The eligible adult or his **or her** legal guardian.

11 3. The name of the reporter shall not be disclosed unless:

- 12 (1) Such reporter specifically authorizes disclosure of his **or her** name; and
13 (2) The department determines that disclosure of the name of the reporter is necessary
14 in order to prevent further harm to an eligible adult.

15 4. Any person who violates the provisions of this section, or who permits or encourages
16 the unauthorized dissemination of information contained in the central registry and in reports and
17 records made pursuant to sections [660.250 to 660.295] **192.2100 to 192.2130**, shall be guilty
18 of a class A misdemeanor.

19 5. The department shall maintain a central registry capable of receiving and maintaining
20 reports received in a manner that facilitates rapid access and recall of the information reported,
21 and of subsequent investigations and other relevant information. The department shall
22 electronically record any telephone report of suspected abuse and neglect received by the
23 department and such recorded reports shall be retained by the department for a period of one year
24 after recording.

25 6. Although reports to the central registry may be made anonymously, the department
26 shall in all cases, after obtaining relevant information regarding the alleged abuse or neglect,
27 attempt to obtain the name and address of any person making a report.

 [660.265.] **192.2112.** When an eligible adult gives consent to receive protective services,
2 the department shall assist the adult in locating and arranging for necessary services in the least
3 restrictive environment reasonably available.

 [660.270.] **192.2115.** When the department receives a report that there has been abuse
2 or neglect, or that there otherwise is a likelihood of serious physical harm to an eligible adult and
3 that he or she is in need of protective services and the department is unable to conduct an
4 investigation because access to the eligible adult is barred by any person, the director may
5 petition the appropriate court for a warrant or other order to enter upon the described premises
6 and investigate the report or to produce the information. The application for the warrant or order
7 shall identify the eligible adult and the facts and circumstances which require the issuance of the
8 warrant or order. The director may also seek an order to enjoin the person from barring access
9 to an eligible adult or from interfering with the investigation. If the court finds that, based on

10 the report and relevant circumstances and facts, probable cause exists showing that the eligible
11 adult faces abuse or neglect, or otherwise faces a likelihood of serious physical harm and is in
12 need of protective services and the director has been prevented by another person from
13 investigating the report, the court may issue the warrant or enjoin the interference with the
14 investigation or both.

[660.275.] **192.2118.** If an eligible adult gives consent to receive protective services and
2 any other person interferes with or prevents the delivery of such services, the director may
3 petition the appropriate court for an order to enjoin the interference with the delivery of the
4 services. The petition shall allege the consent of the eligible adult and shall allege specific facts
5 sufficient to show that the eligible adult faces a likelihood of serious physical harm and is in need
6 of the protective services and that delivery is barred by the person named in the petition. If the
7 court finds upon a preponderance of evidence that the allegations in the petition are true, the
8 court may issue an order enjoining the interference with the delivery of the protective services
9 and may establish such conditions and restrictions on the delivery as the court deems necessary
10 and proper under the circumstances.

[660.280.] **192.2121.** When an eligible adult facing the likelihood of serious physical
2 harm and in need of protective services is unable to give consent because of incapacity or legal
3 disability and the guardian of the eligible adult refuses to provide the necessary services or allow
4 the provision of such services, the director shall inform the court having supervisory jurisdiction
5 over the guardian of the facts showing that the eligible adult faces the likelihood of serious
6 physical harm and is in need of protective services and that the guardian refuses to provide the
7 necessary services or allow the provision of such services under the provisions of sections
8 [660.250 to 660.295] **192.2100 to 192.2130.** Upon receipt of such information, the court may
9 take such action as it deems necessary and proper to insure that the eligible adult is able to meet
10 his essential human needs.

[660.285.] **192.2124.** 1. If the director determines after an investigation that an eligible
2 adult is unable to give consent to receive protective services and presents a likelihood of serious
3 physical harm, the director may initiate proceedings pursuant to chapter 202, RSMo, or chapter
4 475, RSMo, if appropriate.

5 2. In order to expedite adult guardianship and conservatorship cases, the department may
6 retain, within existing funding sources of the department, legal counsel on a case-by-case basis.

[660.290.] **192.2127.** 1. When a peace officer has probable cause to believe that an
2 eligible adult will suffer an imminent likelihood of serious physical harm if not immediately
3 placed in a medical facility for care and treatment, that the adult is incapable of giving consent,
4 and that it is not possible to follow the procedures in section [660.285] **192.2124**, the officer may

5 transport, or arrange transportation for, the eligible adult to an appropriate medical facility which
6 may admit the eligible adult and shall notify the next of kin, if known, and the director.

7 2. Where access to the eligible adult is barred and a substantial likelihood exists of
8 serious physical harm resulting to the eligible adult if he is not immediately afforded protective
9 services, the peace officer may apply to the appropriate court for a warrant to enter upon the
10 described premises and remove the eligible adult. The application for the warrant shall identify
11 the eligible adult and the circumstances and facts which require the issuance of the warrant.

12 3. If immediately upon admission to a medical facility, a person who is legally
13 authorized to give consent for the provision of medical treatment for the eligible adult, has not
14 given or refused to give such consent, and it is the opinion of the medical staff of the facility that
15 treatment is necessary to prevent serious physical harm, the director or the head of the medical
16 facility shall file a petition in the appropriate court for an order authorizing specific medical
17 treatment. The court shall hold a hearing and issue its decision forthwith. Notwithstanding the
18 above, if a licensed physician designated by the facility for such purpose examines the eligible
19 adult and determines that the treatment is immediately or imminently necessary and any delay
20 occasioned by the hearing provided in this subsection would jeopardize the life of the person
21 affected, the medical facility may treat the eligible adult prior to such court hearing.

22 4. The court shall conduct a hearing pursuant to chapter 475, RSMo, forthwith and, if
23 the court finds the eligible adult incapacitated, it shall appoint a guardian ad litem for the person
24 of the eligible adult to determine the nature and extent of the medical treatment necessary for the
25 benefit of the eligible adult and to supervise the rendition of such treatment. The guardian ad
26 litem shall promptly report the completion of treatment to the court, who shall thereupon conduct
27 a restoration hearing or a hearing to appoint a permanent guardian.

28 5. The medical care under this section may not be rendered in a mental health facility
29 unless authorized pursuant to the civil commitment procedures in chapter 632, RSMo.

30 6. Nothing contained in this section or in any other section of sections [660.250 to
31 660.295] **192.2100 to 192.2130** shall be construed as requiring physician or medical care or
32 hospitalization of any person who, because of religious faith or conviction, relies on spiritual
33 means or prayer to cure or prevent disease or suffering nor shall any provision of sections
34 [660.250 to 660.295] **192.2100 to 192.2130** be construed so as to designate any person as an
35 eligible adult who presents a likelihood of suffering serious physical harm and is in need of
36 protective services solely because such person, because of religious faith or conviction, relies on
37 spiritual means or prayer to cure or prevent disease or suffering.

 [660.295.] **192.2130.** If an eligible adult does not consent to the receipt of reasonable and
2 necessary protective services, or if an eligible adult withdraws previously given consent, the
3 protective services shall not be provided or continued; except that, if the director has reasonable

4 cause to believe that the eligible adult lacks the capacity to consent, the director may seek a court
5 order pursuant to the provisions of section [660.285] **192.2124**.

2 [198.070.] **192.2150**. 1. [When] As used in sections **192.2150 to 192.2187**, unless the
3 context clearly indicates otherwise, the following terms mean:

4 (1) "Consumer", a consumer of personal care assistance services as defined in
5 section **208.900, RSMo**;

6 (2) "Patient", any patient of any entity licensed or certified under chapter **197 or**
7 **198, RSMo**, or a client of an in-home services provider or adult day care provider;

8 (3) "Provider", any entity licensed or certified under chapter **197 or 198, RSMo**,
9 an in-home services provider agency, adult day care provider, or personal care assistance
10 services vendor as defined in section **208.900, RSMo**;

11 (4) "Resident", any resident of any entity licensed or certified under chapter **197**
12 **or 198, RSMo**.

13 2. Any adult day care worker; chiropractor; Christian Science practitioner; coroner;
14 dentist; embalmer; employee of the departments of social services, mental health, or health and
15 senior services; employee of a local area agency on aging or an organized area agency on aging
16 program; funeral director; home health agency or home health agency employee; hospital and
17 clinic personnel engaged in examination, care, or treatment of persons; in-home services owner,
18 provider, operator, or employee; law enforcement officer; long-term care facility administrator
19 or employee; medical examiner; medical resident or intern; mental health professional; minister;
20 nurse; nurse practitioner; optometrist; other health practitioner; peace officer; pharmacist;
21 physical therapist; physician; physician's assistant; podiatrist; probation or parole officer;
22 psychologist; social worker; **personal care assistance services vendor employee or attendant**;
23 or other person **charged** with the care of a person sixty years of age or older or an eligible adult
24 **as defined in section 192.2100 who** has reasonable cause to believe that a [resident of a facility]
25 **patient, resident, or consumer** has been abused or neglected, [he or she] **or that the**
26 **falsification of any documents verifying service delivery to a patient, resident, or consumer**
27 **has occurred**, shall immediately report or cause a report to be made to the department.

28 [2.] 3. In addition to those persons required to report under subsection 2 of this
29 section, any other person having reasonable cause to believe that a patient, resident, or
30 consumer has been abused or neglected, or that the falsification of any documents verifying
31 service delivery to a patient, resident, or consumer has occurred may report such
32 information to the department.

33 4. If a report is made by the patient's or resident's physician, the department shall
34 provide information regarding the progress of the investigation to the physician upon
request.

35 5. The report shall contain:

36 (1) The name and address of the [facility, the name of the resident,] **provider and the**
37 **patient, resident, or consumer;**

38 (2) Information regarding the nature of the abuse or neglect, **or falsification of**
39 **documents verifying service delivery;**

40 (3) The name of the complainant[,]; and

41 (4) Any other information which might be helpful in an investigation.

42 [3. Any person required in subsection 1 of this section to report or cause a report to be
43 made to the department who knowingly fails to make a report within a reasonable time after the
44 act of abuse or neglect as required in this subsection is guilty of a class A misdemeanor.

45 4. In addition to the penalties imposed by this section, any administrator who knowingly
46 conceals any act of abuse or neglect resulting in death or serious physical injury, as defined in
47 section 565.002, RSMo, is guilty of a class D felony.

48 5. In addition to those persons required to report pursuant to subsection 1 of this section,
49 any other person having reasonable cause to believe that a resident has been abused or neglected
50 may report such information to the department.]

51 6. Upon receipt of a report **that indicates an imminent danger to the health, safety,**
52 **or welfare of a patient, resident, or consumer or substantial probability that death or**
53 **serious physical injury will result**, the department shall initiate an investigation within
54 twenty-four hours [and]. **The department shall initiate all other investigations as soon as**
55 **practicable. If the patient, resident, or consumer has been appointed a guardian or**
56 **conservator, or both, under chapter 475, RSMo, or if the patient, resident, or consumer has**
57 **been certified to be incapacitated in accordance with sections 404.800 to 404.872, RSMo,**
58 **the department**, as soon as possible during the course of the investigation, shall notify the
59 **patient's, resident's [next of kin or responsible party], or consumer's legal representative**
60 **(guardian, conservator, or agent under a durable power of attorney for health care)** of the
61 report [and], the investigation, and [further notify them] whether the report was substantiated or
62 unsubstantiated unless such person is the alleged perpetrator [of the abuse or neglect]. **In the**
63 **case of investigations involving facilities licensed under chapter 198, RSMo, the**
64 **department may notify family members or guardians of the results of investigations in**
65 **accordance with section 198.532, RSMo.** As provided in section 565.186, RSMo,
66 substantiated reports of elder abuse shall be promptly reported by the department to the
67 appropriate law enforcement agency and prosecutor.

68 7. If the investigation indicates possible abuse or neglect [of a resident] **or falsification**
69 **of documents verifying service delivery**, the investigator shall refer the complaint together with
70 the investigator's report to the department director or the director's designee for appropriate

71 action. **When information gained from an investigation indicates a crime has occurred, the**
72 **department shall report such information to appropriate law enforcement authorities.**

73 **8.** If, during the investigation or at its completion, the department has reasonable cause
74 to believe that immediate [removal] **action** is necessary to protect the **patient, resident, or**
75 **consumer** from abuse or neglect, the department or the local prosecuting attorney may, or the
76 attorney general upon request of the department shall, file a petition for temporary care and
77 protection of the **patient, resident, or consumer** in a circuit court of competent jurisdiction. The
78 circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte
79 order granting the department authority for the temporary care and protection of the **patient,**
80 **resident, or consumer,** for a period not to exceed thirty days.

81 [8.] **9.** Reports shall be confidential, [as provided pursuant to section 660.320 , RSMo]
82 **shall not be deemed a public record, and shall not be subject to the provisions of section**
83 **109.180, RSMo, or chapter 610, RSMo. The name of the complainant or any person**
84 **mentioned in the reports shall not be disclosed unless:**

85 **(1) The complainant, patient, resident, or consumer mentioned, or the patient's,**
86 **resident's, or consumer's legal representative agrees to disclosure of his or her name;**

87 **(2) The department determines that disclosure is necessary to prevent further abuse**
88 **or neglect, or falsification of any documents verifying service delivery to a patient, resident,**
89 **or consumer of personal care assistance services;**

90 **(3) Release of a name is required for conformance with a lawful subpoena;**

91 **(4) Release of a name is required in connection with a review by the administrative**
92 **hearing commission in accordance with section 198.039, RSMo;**

93 **(5) The department determines that release of a name is appropriate when**
94 **forwarding a report of findings of an investigation to a licensing authority; or**

95 **(6) Release of a name is requested by the department of social services for the**
96 **purpose of licensure under chapter 210, RSMo.**

97 **10. Within five working days after a report required to be made under this section**
98 **is received, the person making the report shall be notified of its receipt and the initiation**
99 **of the investigation.**

100 [9.] **11.** Anyone, except any person who has abused or neglected a **patient,** resident [in
101 a facility], **or consumer or who has falsified documents verifying service delivery to a**
102 **patient, resident, or consumer,** who makes a report pursuant to this section or who testifies in
103 any administrative or judicial proceeding arising from the report shall be immune from any civil
104 or criminal liability for making such a report or for testifying except for liability for perjury,
105 unless such person acted negligently, recklessly, in bad faith or with malicious purpose. It is a

106 crime pursuant to section 565.186 and 565.188, RSMo, for any person to purposely file a false
107 report of elder abuse or neglect.

108 [10. Within five working days after a report required to be made pursuant to this section
109 is received, the person making the report shall be notified in writing of its receipt and of the
110 initiation of the investigation.

111 11. No person who directs or exercises any authority in a facility shall evict, harass,
112 dismiss or retaliate against a resident or employee because such resident or employee or any
113 member of such resident's or employee's family has made a report of any violation or suspected
114 violation of laws, ordinances or regulations applying to the facility which the resident, the
115 resident's family or an employee has reasonable cause to believe has been committed or has
116 occurred. Through the existing department information and referral telephone contact line,
117 residents, their families and employees of a facility shall be able to obtain information about their
118 rights, protections and options in cases of eviction, harassment, dismissal or retaliation due to
119 a report being made pursuant to this section.

120 12. Any person who abuses or neglects a resident of a facility is subject to criminal
121 prosecution under section 565.180, 565.182, or 565.184, RSMo.

122 13.] **12.** The department shall maintain the employee disqualification list and place on
123 the employee disqualification list the names of any persons who are or have been employed [in
124 any facility] **by any provider or consumer** and who have been finally determined by the
125 department pursuant to section [660.315] **192.2175**, RSMo[.]:

126 (1) To have **purposely**, knowingly or recklessly abused or neglected a [resident] **patient**
127 **or consumer**. For purposes of this section only, "**purposely**", "knowingly" and "recklessly"
128 shall have the meanings [that are ascribed to them in this section. A person acts "knowingly"
129 with respect to the person's conduct when a reasonable person should be aware of the result
130 caused by his or her conduct. A person acts "recklessly" when the person consciously disregards
131 a substantial and unjustifiable risk that the person's conduct will result in serious physical injury
132 and such disregard constitutes a gross deviation from the standard of care that a reasonable
133 person would exercise in the situation] **as such terms are defined in chapter 562, RSMo;**

134 (2) To have **falsified documents verifying service delivery to a patient, resident, or**
135 **consumer.**

136 **13. No person who directs or exercises any authority on behalf of a provider and**
137 **no personal care attendant, as defined in section 208.900, RSMo, shall evict, harass,**
138 **dismiss, or retaliate against a patient, resident, consumer, or employee because such**
139 **patient, resident, consumer, or employee or any member of such patient's, resident's,**
140 **consumer's, or employee's family has made a report of any violation or suspected violation**
141 **of laws, standards, or regulations applying to the provider or attendant which the**

complainant has reasonable cause to believe has been committed or has occurred. Through existing department information and referral telephone contact line, patients, residents, consumers, their families, and employees of a provider shall be able to obtain information regarding their rights, protections, and options in cases of eviction, harassment, dismissal, or retaliation due to a report being made under this section.

[14.] 15. The timely self-reporting of incidents to the central registry by a [facility] provider, shall continue to be investigated in accordance with department policy, and shall not be counted or reported by the department as a hot-line call but rather a self-reported incident. If the self-reported incident results in a regulatory violation, such incident shall be reported as a substantiated report.

16. Any potential patient or new referral of the department shall be screened to ascertain if they are included on the Missouri sexual offender registry maintained by Missouri state highway patrol. If any potential patient or potential resident is included on the Missouri sexual offender registry, the department shall notify the provider of such at the time the referral is made.

192.2153. 1. Any person required to report or cause a report to be made to the department under subsection 1 of section 192.2150 who fails to make such a report or cause such a report to be made within twenty-four hours after the act or the discovery of the act by such person of abuse or neglect is guilty of a class A misdemeanor.

2. In addition to any other penalties imposed by this section, any provider or employer of a provider who knowingly conceals any act of abuse or neglect that results in death or serious physical injury, as defined in section 565.002, RSMo, is guilty of a class D felony.

3. If a provider willfully and knowingly fails to report abuse by an employee of the provider and such employee is later found guilty or pleads guilty to a violation of section 565.180, 565.182, or 565.184, RSMo, the provider may be subject to an administrative penalty of one thousand dollars per violation to be collected by the department. Any moneys collected shall be deposited in the nursing facility quality of care fund. Any provider that has an administrative penalty imposed by the department may seek an administrative review of the department's action under chapter 621, RSMo. Any decision of the administrative hearing commission may be appealed to the circuit court in the county where the violation occurred for judicial review as a contested case under chapter 536, RSMo.

[660.315.] 192.2175. 1. After an investigation and a determination has been made to place a person's name on the employee disqualification list, that person shall be notified in writing mailed to his or her last known address that:

4 (1) An allegation has been made against the person, the substance of the allegation and
5 that an investigation has been conducted which tends to substantiate the allegation;

6 (2) The person's name will be included in the employee disqualification list of the
7 department;

8 (3) The consequences of being so listed including the length of time to be listed; and

9 (4) The person's rights and the procedure to challenge the allegation.

10 2. **Notice by mail to the last known address, as provided by the person to the**
11 **person's employer at the time of the allegation, shall satisfy the requirements of this**
12 **section. If the person has provided the department with a more recent address, notice shall**
13 **be sent to the more recent address. Notice shall be complete upon such mailing.** If no reply
14 has been received within thirty days of mailing the notice, the department may include the name
15 of such person on its list. The length of time the person's name shall appear on the employee
16 disqualification list shall be determined by the director or the director's designee, based upon the
17 criteria contained in subsection 9 of this section.

18 3. If the person so notified wishes to challenge the allegation, such person may file an
19 application for a hearing with the department. The department shall grant the application within
20 thirty days after receipt by the department and set the matter for hearing[, or the department shall
21 notify the applicant that, after review, the allegation has been held to be unfounded and the
22 applicant's name will not be listed].

23 4. If a person's name is included on the employee disqualification list without notice **in**
24 **accordance with subsections 1 and 2 of this section** by the department, such person may file
25 a request with the department for removal of the name or for a hearing. Within thirty days after
26 receipt of the request, the department shall either remove the name from the list or grant a
27 hearing and set a date therefor.

28 5. Any hearing shall be conducted [in the county of the person's residence] by the
29 director of the department or the director's designee **in Cole County or in the county of the**
30 **person's residence, or by telephone, in the discretion of the director or the director's**
31 **designee.** The provisions of chapter 536, RSMo, for a contested case except those provisions
32 or amendments which are in conflict with this section, shall apply to and govern the proceedings
33 contained in this section and the rights and duties of the parties involved. The person appealing
34 such an action shall be entitled to present evidence, pursuant to the provisions of chapter 536,
35 RSMo, relevant to the allegations.

36 6. Upon the record made at the hearing, the director of the department or the director's
37 designee shall determine all questions presented and shall determine whether the person shall
38 be listed on the employee disqualification list. The director of the department or the director's

39 designee shall clearly state the reasons for his or her decision and shall include a statement of
40 findings of fact and conclusions of law pertinent to the questions in issue.

41 7. A person aggrieved by the decision following the hearing shall be informed of his or
42 her right to seek judicial review as provided under chapter 536, RSMo. If the person fails to
43 appeal the director's findings, those findings shall constitute a final determination that the person
44 shall be placed on the employee disqualification list.

45 8. A decision by the director shall be inadmissible in any civil action brought against a
46 [facility or the in-home services provider agency] **provider or personal care attendant** and
47 arising out of the facts and circumstances which brought about the employment disqualification
48 proceeding, unless the civil action is brought against the [facility or the in-home services
49 provider agency] **provider or personal care attendant** by the department of health and senior
50 services or one of its divisions.

51 9. The length of time the person's name shall appear on the employee disqualification
52 list shall be determined by the director of the department of health and senior services or the
53 director's designee, based upon the following:

54 (1) Whether the person acted **purposely**, recklessly or knowingly, as defined in chapter
55 562, RSMo;

56 (2) The degree of the physical, sexual, or emotional injury or harm; or the degree of the
57 imminent danger to the health, safety or welfare of a [resident or in-home services client] **the**
58 **alleged victim**;

59 (3) The degree of misappropriation of the property or funds, or falsification of any
60 documents for service delivery of [an in-home services client] **a patient, resident, or consumer**;

61 (4) Whether the person has previously been listed on the employee disqualification list;

62 (5) Any mitigating circumstances;

63 (6) Any aggravating circumstances; and

64 (7) Whether alternative sanctions resulting in conditions of continued employment are
65 appropriate in lieu of placing a person's name on the employee disqualification list. Such
66 conditions of employment may include, but are not limited to, additional training and employee
67 counseling. Conditional employment shall terminate upon the expiration of the designated
68 length of time and the person's submitting documentation which fulfills the department of health
69 and senior services' requirements.

70 10. The removal of any person's name from the list under this section shall not prevent
71 the director from keeping records of all acts finally determined to have occurred under this
72 section.

11. The department shall [provide] **make available** the list maintained pursuant to this section to other state departments upon request and to any person, corporation or association who:

- (1) Is licensed as an operator under chapter 198, RSMo;
- (2) Provides in-home services under contract with the department;
- (3) Employs [nurses and nursing assistants] **health care staff** for temporary or intermittent placement [in health care facilities] **with providers**;
- (4) Is approved by the department to issue certificates for nursing assistants training; [or]
- (5) Is an entity licensed under chapter 197, RSMo;
- (6) **Is a personal care assistance services vendor agency, as defined in section 208.900, RSMo; or**
- (7) **Is an adult day care provider licensed under sections 192.2200 to 192.2227.**

The department shall inform any person listed above who inquires of the department whether or not a particular name is on the list. The department may require that the request be made in writing.

12. **The department shall, upon request, provide to the division of employment security within the department of labor and industrial relations copies of the investigative reports related to an employee being placed on the employee disqualification list.**

13. No person, corporation or association who received the employee disqualification list under subsection 11 of this section shall knowingly employ any person who is on the employee disqualification list. **No person who is listed on the employee disqualification list shall be paid from public moneys as a personal care assistance services attendant.** Any person, corporation or association who received the employee disqualification list under subsection 11 of this section, or any **consumer or** person responsible for providing health care service, who declines to employ or terminates a person whose name is listed in this section shall be immune from suit by that person or anyone else acting for or in behalf of that person for the failure to employ or for the termination of the person whose name is listed on the employee disqualification list.

[13.] 14. Any employer who is required to discharge an employee because the employee was placed on [a] **any** disqualification list maintained by the department of health and senior services [after the date of hire], **including the employee disqualification list maintained under section 192.2175 or any of the background check lists in the family care safety registry under sections 210.900 to 210.936, RSMo**, shall not be charged for unemployment insurance benefits based on wages paid to the employee for work prior to the date of discharge, pursuant to section 288.100, RSMo. **Any person who is employed in a position for which employment**

109 **is prohibited while such person is listed on the employee disqualification list shall have his**
110 **or her placement on the employee disqualification list extended one year.**

111 [14.] **15.** Any person who has been listed on the employee disqualification list may
112 request that the director remove his or her name from the employee disqualification list. The
113 request shall be written and may not be made more than once every twelve months. The request
114 will be granted by the director upon a clear showing, by written submission only, that the person
115 will not commit additional acts of abuse, neglect, misappropriation of the property or funds, or
116 the falsification of any documents [of] **verifying** service delivery to [an in-home services client]
117 **a patient, resident, or consumer.** The director may make conditional the removal of a person's
118 name from the list on any terms that the director deems appropriate, and failure to comply with
119 such terms may result in the person's name being relisted. The director's determination of
120 whether to remove the person's name from the list is not subject to appeal.

[660.317.] **192.2178.** 1. For the purposes of this section, the term "provider" means any
2 person, corporation or association who:

3 (1) Is licensed as an operator pursuant to chapter 198, RSMo;

4 (2) Provides in-home services under contract with the department;

5 (3) Employs [nurses or nursing assistants] **health care staff** for temporary or intermittent
6 placement in health care facilities;

7 (4) Is an entity licensed pursuant to chapter 197, RSMo;

8 (5) Is a public or private facility, day program, residential facility or specialized service
9 operated, funded or licensed by the department of mental health; [or]

10 (6) Is a licensed adult day care provider;

11 (7) **Is a personal care assistance services vendor agency, as defined in section**
12 **208.900, RSMo.**

13 2. For the purpose of this section "patient or resident" has the same meaning as such term
14 is defined in section 43.540, RSMo; **and "consumer" has the same meaning as such term is**
15 **defined in section 208.900, RSMo.**

16 3. Prior to allowing any person who has been hired as a full-time, part-time or temporary
17 position to have contact with any patient [or], resident, **or consumer**, the provider shall, or in
18 the case of temporary employees hired through or contracted for an employment agency, the
19 employment agency shall prior to sending a temporary employee to a provider:

20 (1) Request a criminal background check as provided in section 43.540, RSMo.
21 Completion of an inquiry to the highway patrol for criminal records that are available for
22 disclosure to a provider for the purpose of conducting an employee criminal records background
23 check shall be deemed to fulfill the provider's duty to conduct employee criminal background
24 checks pursuant to this section; except that, completing the inquiries pursuant to this subsection

25 shall not be construed to exempt a provider from further inquiry pursuant to common law
26 requirements governing due diligence. If an applicant has not resided in this state for five
27 consecutive years prior to the date of his or her application for employment, the provider shall
28 request a nationwide check for the purpose of determining if the applicant has a prior criminal
29 history in other states. The fingerprint cards and any required fees shall be sent to the highway
30 patrol's criminal records division. The first set of fingerprints shall be used for searching the
31 state repository of criminal history information. If no identification is made, the second set of
32 fingerprints shall be forwarded to the Federal Bureau of Investigation, Identification Division,
33 for the searching of the federal criminal history files. The patrol shall notify the submitting state
34 agency of any criminal history information or lack of criminal history information discovered
35 on the individual. The provisions relating to applicants for employment who have not resided
36 in this state for five consecutive years shall apply only to persons who have no employment
37 history with a licensed Missouri facility during that five-year period. Notwithstanding the
38 provisions of section 610.120, RSMo, all records related to any criminal history information
39 discovered shall be accessible and available to the provider making the record request; and

40 (2) Make an inquiry to the department of health and senior services whether the person
41 is listed on the employee disqualification list as provided in section [660.315] **192.2175**;

42 (3) **Request of the person a physical address where the person may be located in**
43 **addition to any other address provided by the person such as a post office box address.**

44
45 **For any elder-care worker listed in the family care safety registry or who has submitted**
46 **the registration form required by sections 210.900 to 210.936, RSMo, a provider may**
47 **access the family care safety registry in lieu of the requirements established under section**
48 **192.2175 or subsections 3 to 5 of section 192.2178.**

49 4. When the provider requests a criminal background check pursuant to section 43.540,
50 RSMo, the requesting entity may require that the applicant reimburse the provider for the cost
51 of such record check. When a provider requests a nationwide criminal background check
52 pursuant to subdivision (1) of subsection 3 of this section, the total cost to the provider of any
53 background check required pursuant to this section shall not exceed five dollars which shall be
54 paid to the state. State funding and the obligation of a provider to obtain a nationwide criminal
55 background check shall be subject to the availability of appropriations.

56 5. An applicant for a position to have contact with patients or residents of a provider
57 shall:

58 (1) Sign a consent form as required by section 43.540, RSMo, so the provider may
59 request a criminal records review;

60 (2) Disclose the applicant's criminal history. For the purposes of this subdivision
61 "criminal history" includes any conviction or a plea of guilty to a misdemeanor or felony charge
62 and shall include any suspended imposition of sentence, any suspended execution of sentence
63 or any period of probation or parole; and

64 (3) Disclose if the applicant is listed on the employee disqualification list as provided
65 in section [660.315] **192.2175**.

66 6. An applicant who knowingly fails to disclose his or her criminal history as required
67 in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class
68 A misdemeanor if the provider knowingly hires or retains a person to have contact with patients
69 or residents and the person has been convicted of, pled guilty to or nolo contendere in this state
70 or any other state or has been found guilty of a crime, which if committed in Missouri would be
71 a class A or B felony violation of chapter **195**, 565, 566 or 569, RSMo, **a violation of section**
72 **570.090, RSMo, or any felony violation or three or more misdemeanor violations of section**
73 **570.030, RSMo, or any violation of subsection [3] 1 of section [198.070, RSMo,] 192.2153 or**
74 **section 568.020, RSMo. For any persons hired on or after the effective date of this section,**
75 **a provider shall not hire any person with a disqualifying criminal history unless such**
76 **person has received a good cause waiver of the disqualifying criminal history. For any**
77 **persons employed as of the effective date of this section, a provider shall not retain any**
78 **person with a disqualifying criminal history, including any amendments enacted after**
79 **January 1, 2007, unless such person has submitted a completed good cause waiver**
80 **application prior to January 1, 2007. If the good cause waiver is denied, the provider shall**
81 **not continue to retain such person after the provider is notified of the denial of the good**
82 **cause waiver.**

83 7. Any in-home services provider agency or home health agency [shall be] **or hospice**
84 **is** guilty of a class A misdemeanor if such agency **or hospice** knowingly [employs] **hires or**
85 **retains** a person to provide in-home services, **hospice services**, or home health services to any
86 in-home services client, **hospice patient**, or home health patient and such person either refuses
87 to register with the family care safety registry or [is listed] **has a finding report** on any of the
88 background check lists in the family care safety registry pursuant to sections 210.900 to 210.937,
89 RSMo.

90 8. The highway patrol shall examine whether protocols can be developed to allow a
91 provider to request a statewide fingerprint criminal records review check through local law
92 enforcement agencies.

93 9. A provider may use a private investigatory agency rather than the highway patrol to
94 do a criminal history records review check, and alternatively, the applicant pays the private
95 investigatory agency such fees as the provider and such agency shall agree.

10. Except for the hiring restriction based on the department of health and senior services employee disqualification list established pursuant to section [660.315] **192.2175**, the department of health and senior services shall promulgate rules and regulations to waive the hiring restrictions pursuant to this section for good cause. For purposes of this section, "good cause" means the department has made a determination by examining the employee's prior work history and other relevant factors that [such employee does not present a risk to the health or safety of residents] **the hiring restriction contained in subsections 6 and 7 of this section is removed and the hiring decision becomes the responsibility of the provider.**

[660.300.] **192.2181.** 1. [When any adult day care worker; chiropractor; Christian Science practitioner; coroner; dentist; embalmer; employee of the departments of social services, mental health, or health and senior services; employee of a local area agency on aging or an organized area agency on aging program; funeral director; home health agency or home health agency employee; hospital and clinic personnel engaged in examination, care, or treatment of persons; in-home services owner, provider, operator, or employee; law enforcement officer; long-term care facility administrator or employee; medical examiner; medical resident or intern; mental health professional; minister; nurse; nurse practitioner; optometrist; other health practitioner; peace officer; pharmacist; physical therapist; physician; physician's assistant; podiatrist; probation or parole officer; psychologist; or social worker has reasonable cause to believe that an in-home services client has been abused or neglected, as a result of in-home services, he or she shall immediately report or cause a report to be made to the department. If the report is made by a physician of the in-home services client, the department shall maintain contact with the physician regarding the progress of the investigation.

2.] When a report of deteriorating physical condition resulting in possible abuse or neglect of an in-home services client is received by the department, the client's case manager and the department nurse shall be notified. The client's case manager shall investigate and immediately report the results of the investigation to the department nurse. The department may authorize the in-home services provider nurse to assist the case manager with the investigation.

[3.] **2.** If requested, local area agencies on aging shall provide volunteer training to those persons listed in subsection 1 of [this] section **192.2150** regarding the detection and report of abuse and neglect [pursuant to this section].

[4. Any person required in subsection 1 of this section to report or cause a report to be made to the department who fails to do so within a reasonable time after the act of abuse or neglect is guilty of a class A misdemeanor.

5. The report shall contain the names and addresses of the in-home services provider agency, the in-home services employee, the in-home services client, the home health agency, the

28 home health agency employee, information regarding the nature of the abuse or neglect, the name
29 of the complainant, and any other information which might be helpful in an investigation.

30 6. In addition to those persons required to report under subsection 1 of this section, any
31 other person having reasonable cause to believe that an in-home services client or home health
32 patient has been abused or neglected by an in-home services employee or home health agency
33 employee may report such information to the department.

34 7. If the investigation indicates possible abuse or neglect of an in-home services client
35 or home health patient, the investigator shall refer the complaint together with his or her report
36 to the department director or his or her designee for appropriate action. If, during the
37 investigation or at its completion, the department has reasonable cause to believe that immediate
38 action is necessary to protect the in-home services client or home health patient from abuse or
39 neglect, the department or the local prosecuting attorney may, or the attorney general upon
40 request of the department shall, file a petition for temporary care and protection of the in-home
41 services client or home health patient in a circuit court of competent jurisdiction. The circuit
42 court in which the petition is filed shall have equitable jurisdiction to issue an ex parte order
43 granting the department authority for the temporary care and protection of the in-home services
44 client or home health patient, for a period not to exceed thirty days.

45 8. Reports shall be confidential, as provided under section 660.320.

46 9. Anyone, except any person who has abused or neglected an in-home services client
47 or home health patient, who makes a report pursuant to this section or who testifies in any
48 administrative or judicial proceeding arising from the report shall be immune from any civil or
49 criminal liability for making such a report or for testifying except for liability for perjury, unless
50 such person acted negligently, recklessly, in bad faith, or with malicious purpose.

51 10. Within five working days after a report required to be made under this section is
52 received, the person making the report shall be notified in writing of its receipt and of the
53 initiation of the investigation.

54 11. No person who directs or exercises any authority in an in-home services provider
55 agency or home health agency shall harass, dismiss or retaliate against an in-home services client
56 or home health patient, or an in-home services employee or a home health agency employee
57 because he or any member of his or her family has made a report of any violation or suspected
58 violation of laws, standards or regulations applying to the in-home services provider agency or
59 home health agency or any in-home services employee or home health agency employee which
60 he has reasonable cause to believe has been committed or has occurred.

61 12. Any person who abuses or neglects an in-home services client or home health patient
62 is subject to criminal prosecution under section 565.180, 565.182, or 565.184, RSMo. If such
63 person is an in-home services employee and has been found guilty by a court, and if the

64 supervising in-home services provider willfully and knowingly failed to report known abuse by
65 such employee to the department, the supervising in-home services provider may be subject to
66 administrative penalties of one thousand dollars per violation to be collected by the department
67 and the money received therefor shall be paid to the director of revenue and deposited in the state
68 treasury to the credit of the general revenue fund. Any in-home services provider which has had
69 administrative penalties imposed by the department or which has had its contract terminated may
70 seek an administrative review of the department's action pursuant to chapter 621, RSMo. Any
71 decision of the administrative hearing commission may be appealed to the circuit court in the
72 county where the violation occurred for a trial de novo. For purposes of this subsection, the term
73 "violation" means a determination of guilt by a court.

74 13.] **3.** The department shall establish a quality assurance and supervision process for
75 clients that [requires] **require** an in-home services provider agency to [conduct random visits to]
76 verify compliance with program standards and verify the accuracy of records kept by an in-home
77 services employee.

78 [14. The department shall maintain the employee disqualification list and place on the
79 employee disqualification list the names of any persons who have been finally determined by the
80 department, pursuant to section 660.315, to have recklessly, knowingly or purposely abused or
81 neglected an in-home services client or home health patient while employed by an in-home
82 services provider agency or home health agency. For purposes of this section only, "knowingly"
83 and "recklessly" shall have the meanings that are ascribed to them in this section. A person acts
84 "knowingly" with respect to the person's conduct when a reasonable person should be aware of
85 the result caused by his or her conduct. A person acts "recklessly" when the person consciously
86 disregards a substantial and unjustifiable risk that the person's conduct will result in serious
87 physical injury and such disregard constitutes a gross deviation from the standard of care that a
88 reasonable person would exercise in the situation.

89 15.] **4.** At the time a client has been assessed to determine the level of care as required
90 by rule and is eligible for in-home services, the department shall conduct a "Safe at Home
91 Evaluation" to determine the client's physical, mental, and environmental capacity. The
92 department shall develop the safe at home evaluation tool by rule in accordance with chapter
93 536, RSMo. The purpose of the safe at home evaluation is to assure that each client has the
94 appropriate level of services and professionals involved in the client's care. The plan of service
95 or care for each in-home services client shall be authorized by a nurse. The department may
96 authorize the licensed in-home services nurse, in lieu of the department nurse, to conduct the
97 assessment of the client's condition and to establish a plan of services or care. The department
98 may use the expertise, services, or programs of other departments and agencies on a case-by-case
99 basis to establish the plan of service or care. The department may, as indicated by the safe at

100 home evaluation, refer any client to a mental health professional, as defined in 9 CSR 30-4.030,
101 for evaluation and treatment as necessary.

102 [16.] **5.** Authorized nurse visits shall occur at least twice annually to assess the client and
103 the client's plan of services. The provider nurse shall report the results of his or her visits to the
104 client's case manager. If the provider nurse believes that the plan of service requires alteration,
105 the department shall be notified and the department shall make a client evaluation. All
106 authorized nurse visits shall be reimbursed to the in-home services provider. All authorized
107 nurse visits shall be reimbursed outside of the nursing home cap for in-home services clients
108 whose services have reached one hundred percent of the average statewide charge for care and
109 treatment in an intermediate care facility, provided that the services have been preauthorized by
110 the department.

111 [17.] **6.** All in-home services clients shall be advised of their rights by the department
112 at the initial evaluation. The rights shall include, but not be limited to, the right to call the
113 department for any reason, including dissatisfaction with the provider or services. The
114 department shall establish a process to receive such nonabuse and neglect calls other than the
115 elder abuse and neglect hotline.

116 [18.] **7.** Subject to appropriations, all nurse visits authorized in **this section and** sections
117 [660.250 to 660.300] **192.2100 to 192.2130** shall be reimbursed to the in-home services provider
118 agency.

[660.321.] **192.2184.** Notwithstanding any other provision of law, the department shall
2 not disclose personally identifiable medical, social, personal, or financial records of any eligible
3 adult being served by the [division of senior services] **department** except when disclosed in a
4 manner that does not identify the eligible adult, or when ordered to do so by a court of competent
5 jurisdiction. Such records shall be accessible without court order for examination and copying
6 only to the following persons or offices, or to their designees:

7 (1) The department or any person or agency designated by the department for such
8 purposes as the department may determine;

9 (2) The attorney general, to perform his or her constitutional or statutory duties;

10 (3) The department of mental health for residents placed through that department, to
11 perform its constitutional or statutory duties;

12 (4) Any appropriate law enforcement agency, to perform its constitutional or statutory
13 duties;

14 (5) The eligible adult, his or her legal guardian or any other person designated by the
15 eligible adult; and

16 (6) The department of social services for individuals who receive Medicaid benefits, to
17 perform its constitutional or statutory duties.

[660.310.] **192.2187.** 1. Notwithstanding any other provision of law, if the department of health and senior services proposes to deny, suspend, place on probation, or terminate an in-home services provider agency contract, the department of health and senior services shall serve upon the applicant or contractor written notice of the proposed action to be taken. The notice shall contain a statement of the type of action proposed, the basis for it, the date the action will become effective, and a statement that the applicant or contractor shall have thirty days from the date of mailing or delivery of the notice to file a complaint requesting a hearing before the administrative hearing commission. The administrative hearing commission may consolidate an applicant's or contractor's complaint with any proceeding before the administrative hearing commission filed by such contractor or applicant pursuant to subsection 3 of section 208.156, RSMo, involving a common question of law or fact. Upon the filing of the complaint, the provisions of sections 621.110, 621.120, 621.125, 621.135, and 621.145, RSMo, shall apply. With respect to cases in which the department has denied a contract to an in-home services provider agency, the administrative hearing commission shall conduct a hearing to determine the underlying basis for such denial. However, if the administrative hearing commission finds that the contract denial is supported by the facts and the law, the case need not be returned to the department. The administrative hearing commission's decision shall constitute affirmation of the department's contract denial.

2. The department of health and senior services may issue letters of censure or warning without formal notice or hearing.

3. The administrative hearing commission may stay the suspension or termination of an in-home services provider agency's contract, or the placement of the contractor on probation, pending the commission's findings and determination in the cause, upon such conditions, with or without the agreement of the parties, as the commission deems necessary and appropriate, including the posting of bond or other security except that the commission shall not grant a stay, or if a stay has already been entered shall set aside its stay, unless the commission finds that the contractor has established that servicing the department's clients pending the commission's final determination would not present an imminent danger to the health, safety, or welfare of any client or a substantial probability that death or serious physical harm would result. The commission may remove the stay at any time that it finds that the contractor has violated any of the conditions of the stay. Such stay shall remain in effect, unless earlier removed by the commission, pending the decision of the commission and any subsequent departmental action at which time the stay shall be removed. In any case in which the department has refused to issue a contract, the commission shall have no authority to stay or to require the issuance of a contract pending final determination by the commission.

36 4. Stays granted to contractors by the administrative hearing commission shall, as a
37 condition of the stay, require at a minimum that the contractor under the stay operate under the
38 same contractual requirements and regulations as are in effect, from time to time, as are
39 applicable to all other contractors in the program.

40 5. The administrative hearing commission shall make its final decision based upon the
41 circumstances and conditions as they existed at the time of the action of the department and not
42 based upon circumstances and conditions at the time of the hearing or decision of the
43 commission.

44 6. In any proceeding before the administrative hearing commission pursuant to this
45 section, the burden of proof shall be on the contractor or applicant seeking review.

46 7. Any person, including the department, aggrieved by a final decision of the
47 administrative hearing commission may seek judicial review of such decision as provided in
48 section 621.145, RSMo.

[660.400.] **192.2200.** As used in sections 199.025, RSMo, and [660.403 to 660.420]
2 **192.2203 to 192.2227**, unless the context clearly indicates otherwise, the following terms mean:

3 (1) "Adult", an individual over the age of eighteen;

4 (2) "Adult day care program", a group program designed to provide care and supervision
5 to meet the needs of functionally impaired adults for periods of less than twenty-four hours but
6 more than two hours per day in a place other than the adult's own home;

7 (3) "Adult day care provider", the person, corporation, partnership, association or
8 organization legally responsible for the overall operation of the adult day care program;

9 (4) "Department", the department of [social] **health and senior** services;

10 (5) "Director", the director of the division of aging;

11 (6) "Division", the division of aging;

12 (7) "Functionally impaired adult", an adult who by reason of age or infirmity requires
13 care and supervision;

14 (8) "License", the document issued by the [division] **department** in accordance with the
15 provisions of sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to 192.2227** to an
16 adult day care program which authorizes the adult day care provider to operate the program in
17 accordance with the provisions of sections [199.025, RSMo, and 660.403 to 660.420] **192.2203**
18 **to 192.2227** and the applicable rules promulgated pursuant thereto;

19 (9) "Participant", a functionally impaired adult who is enrolled in an adult day care
20 program;

21 (10) "Person", any individual, firm, corporation, partnership, association, agency, or an
22 incorporated or unincorporated organization regardless of the name used;

23 (11) "Provisional license", the document issued by the [division] **department** in
24 accordance with the provisions of sections [199.025, RSMo, and 660.403 to 660.420] **192.2203**
25 **to 192.2227** to an adult day care provider which is not currently meeting the requirements
26 necessary to obtain a license;

27 (12) "Related", any of the following by blood, marriage or adoption: parent, child,
28 grandchild, brother, sister, half-brother, half-sister, stepparent, uncle, aunt, niece, nephew, or first
29 cousin;

30 (13) "Staff participant ratio", the number of adult care staff required by the [division]
31 **department** in relation to the number of adults being cared for by such staff.

[660.403.] **192.2203.** 1. It shall be unlawful for any person to establish, maintain, or
2 operate an adult day care program, or to advertise or hold himself out as being able to perform
3 any adult day care service, unless he has obtained the proper license.

4 2. All applications for licenses shall be made on forms provided by the [division]
5 **department** and in the manner prescribed by the [division] **department**. All forms provided
6 shall include a fee schedule.

7 3. The [division] **department** shall conduct an investigation of the adult day care
8 program, and the applicant, for which a license is sought in order to determine if such program
9 is complying with the following:

10 (1) Local fire safety requirements or fire safety requirements of the [division]
11 **department** if there are no local codes;

12 (2) Local or state sanitation requirements;

13 (3) Local building and zoning requirements, where applicable;

14 (4) Staff/adult ratios required by the [division] **department**; and

15 (5) Other applicable provisions of sections [199.025, RSMo, and 660.403 to 660.420]
16 **192.2203 to 192.2227** and all applicable rules promulgated pursuant thereto, including but not
17 limited to:

18 (a) The applicant's ability to render adult day care;

19 (b) The proposed plan for providing adult day care;

20 (c) The proposed plan of operation of the adult day care program, so that, in the
21 judgment of the [division] **department**, minimum standards are being met to insure the health
22 and safety of the participants.

23 4. Following completion of its investigation made pursuant to subsection 3 of this
24 section and a finding that the applicant for a license has complied with all applicable rules
25 promulgated pursuant to sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to**
26 **192.2227** the [division] **department** shall issue a license to such applicant. Such license shall

27 be valid for the period designated by the division, which period shall not exceed two years from
28 the date of issuance, for the premises and persons named in the application.

29 5. Each license issued under sections [199.025, RSMo, and 660.403 to 660.420]
30 **192.2203 to 192.2227** shall include the name of the provider, owner and operator; the name of
31 the adult day care program; the location of the adult day care program; the hours of operations;
32 the number and any limitations or the type of participants who may be served; and the period for
33 which such license is valid.

34 6. The [division] **department** may issue a provisional license to an adult day care
35 program that is not currently meeting requirements for a license but which demonstrates the
36 potential capacity to meet full requirements for license; except that, no provisional license shall
37 be issued unless the director is satisfied that the operation of the adult day care program is not
38 detrimental to the health and safety of the participants being served. The provisional license
39 shall be nonrenewable and shall be valid for the period designated by the [division] **department**,
40 which period shall not exceed six months from the date of issuance. Upon issuance of a regular
41 license, a day care program's provisional license shall immediately be null and void.

[660.405.] **192.2206.** 1. The provisions of sections [199.025, RSMo, and 660.403 to
2 660.420] **192.2203 to 192.2227** shall not apply to the following:

3 (1) Any adult day care program operated by a person in which care is offered for no more
4 than two hours per day;

5 (2) Any adult day care program maintained or operated by the federal government except
6 where care is provided through a management contract;

7 (3) Any person who cares solely for persons related to the provider or who has been
8 designated as guardian of that person;

9 (4) Any adult day care program which cares for no more than four persons unrelated to
10 the provider;

11 (5) Any adult day care program licensed by the department of mental health under
12 chapter 630, RSMo, which provides care, treatment and habilitation exclusively to adults who
13 have a primary diagnosis of mental disorder, mental illness, mental retardation or developmental
14 disability as defined;

15 (6) Any adult day care program administered or maintained by a religious not-for-profit
16 organization serving a social or religious function if the adult day care program does not hold
17 itself out as providing the prescription or usage of physical or medical therapeutic activities or
18 as providing or administering medicines or drugs.

19 2. Nothing in this section shall prohibit any person listed in subsection 1 of this section
20 from applying for a license or receiving a license if the adult day care program owned or operated

21 by such person conforms to the provisions of sections [199.025, RSMo, and 660.403 to 660.420]
22 **192.2203 to 192.2227** and all applicable rules promulgated pursuant thereto.

[660.407.] **192.2209.** 1. The director, or his authorized representative, shall have the
2 right to enter the premises of an applicant for or holder of a license at any time during the hours
3 of operation of a center to determine compliance with provisions of sections [199.025, RSMo,
4 and 660.403 to 660.420] **192.2203 to 192.2227** and applicable rules promulgated pursuant
5 thereto. Entry shall also be granted for investigative purposes involving complaints regarding
6 the operations of an adult day care program. The [division] **department** shall make at least two
7 inspections per year, at least one of which shall be unannounced to the operator or provider. The
8 [division] **department** may make such other inspections, announced or unannounced, as it
9 deems necessary to carry out the provisions of sections [199.025, RSMo, and 660.403 to
10 660.420] **192.2203 to 192.2227**.

11 2. The applicant for or holder of a license shall cooperate with the investigation and
12 inspection by providing access to the adult day care program, records and staff, and by providing
13 access to the adult day care program to determine compliance with the rules promulgated
14 pursuant to sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to 192.2227**.

15 3. Failure to comply with any lawful request of the [division] **department** in connection
16 with the investigation and inspection is a ground for refusal to issue a license or for the
17 suspension or revocation of a license.

18 4. The [division] **department** may designate to act for it, with full authority of law, any
19 instrumentality of any political subdivision of the state of Missouri deemed by the [division]
20 **department** to be competent to investigate and inspect applicants for or holders of licenses.

[660.409.] **192.2212.** Each application for a license, or the renewal thereof, issued
2 pursuant to sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to 192.2227** shall be
3 accompanied by a nonrefundable fee in the amount required by the [division] **department**. The
4 fee, to be determined by the director [of the division], shall not exceed one hundred dollars and
5 shall be based on the licensed capacity of the applicant.

[660.411.] **192.2215.** The [division] **department** shall offer technical assistance or
2 consultation to assist applicants for or holders of licenses or provisional licenses in meeting the
3 requirements of sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to 192.2227**, staff
4 qualifications, and other aspects involving the operation of an adult day care program, and to
5 assist in the achievement of programs of excellence related to the provision of adult day care.

[660.414.] **192.2218.** 1. Whenever the [division] **department** is advised or has reason
2 to believe that any person is operating an adult day care program without a license, or provisional
3 license, or that any holder of license, or provisional license is not in compliance with the
4 provisions of sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to 192.2227**, the

5 [division] **department** shall make an investigation and inspection to ascertain the facts. If the
6 [division] **department** is not permitted access to the adult day care program in question, the
7 [division] **department** may apply to the circuit court of the county in which the program is
8 located for an order authorizing entry for inspection. The court shall issue the order if it finds
9 reasonable grounds necessitating the inspection.

10 2. If the [division] **department** finds that the adult day care program is being operated
11 in violation of sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to 192.2227**, it may
12 seek, among other remedies, injunctive relief against the adult day care program.

[660.416.] **192.2221.** 1. Any person aggrieved by an official action of the [division]
2 **department** either refusing to issue a license or revoking or suspending a license may seek a
3 determination thereon by the administrative hearing commission pursuant to the provisions of
4 section [161.272] **621.045**, RSMo, et seq.; except that, the petition must be filed with the
5 administrative hearing commission within thirty days after the mailing or delivery of notice to
6 the applicant for or holder of such license or certificate. When the notification of the official
7 action is mailed to the applicant for or holder of such a license, there shall be included in the
8 notice a statement of the procedure whereby the applicant for or holder of such license may
9 appeal the decision of the [division] **department** before the administrative hearing commission.
10 It shall not be a condition to such determination that the person aggrieved seek a reconsideration,
11 a rehearing or exhaust any other procedure within the [division] **department**.

12 2. The administrative hearing commission may stay the revocation or suspension of such
13 certificate or license, pending the commission's findings and determination in the cause, upon
14 such conditions as the commission deems necessary and appropriate including the posting of
15 bond or other security; except that, the commission shall not grant a stay or if a stay has already
16 been entered shall set aside its stay, if, upon application of the [division] **department**, the
17 commission finds reason to believe that continued operation of the facility to which the
18 certificate or license in question applies pending the commission's final determination would
19 present an imminent danger to the health, safety or welfare of any person or a substantial
20 probability that death or serious physical harm would result. In any case in which the [division]
21 **department** has refused to issue a certificate or license, the commission shall have no authority
22 to stay or to require the issuance of a license pending final determination by the commission.

23 3. The administrative hearing commission shall make the final decision as to the
24 issuance, suspension, or revocation of a license. Any person aggrieved by a final decision of the
25 administrative hearing commission, including the [division] **department**, may seek judicial
26 review of such decision by filing a petition for review in the court of appeals for the district in
27 which the adult day care program to which the license in question applies is located. Review

28 shall be had in accordance with the provisions of sections [161.337 and 161.338] **621.189 and**
29 **621.193**, RSMo.

[660.418.] **192.2224.** The director [of the division] shall have the authority to promulgate
2 rules pursuant to this section and chapter 536, RSMo, in order to carry out the provisions of
3 sections [199.025, RSMo, and 660.403 to 660.420. No rule or portion of a rule promulgated
4 under the authority of section 199.025, RSMo, and sections 660.403 to 660.420 shall become
5 effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo]
6 **192.2203 to 192.2227. Any rule or portion of a rule, as that term is defined in section**
7 **536.010, RSMo, that is created under the authority delegated in sections 192.2203 to**
8 **192.2227 shall become effective only if it complies with and is subject to all of the**
9 **provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. Sections**
10 **192.2203 to 192.2227 and chapter 536, RSMo, are nonseverable and if any of the powers**
11 **vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the**
12 **effective date, or to disapprove and annul a rule are subsequently held unconstitutional,**
13 **then the grant of rulemaking authority and any rule proposed or adopted after August 28,**
14 **2006, shall be invalid and void.**

[660.420.] **192.2227.** 1. Any person who violates any provision of sections [199.025,
2 RSMo, and 660.403 to 660.420] **192.2203 to 192.2227**, or who, for himself or for any other
3 person, makes materially false statements in order to obtain a certificate or license, or the renewal
4 thereof, issued pursuant to sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to**
5 **192.2227**, shall be guilty of a class A misdemeanor.

6 2. Any person who is convicted pursuant to this section shall, in addition to all other
7 penalties provided by law, have any license issued to [him] **such person** under sections
8 [199.025, RSMo, and 660.403 to 660.420] **192.2203 to 192.2227** revoked, and shall not operate,
9 nor hold any license to operate, any adult day care program, or other entity governed by the
10 provisions of sections [199.025, RSMo, and 660.403 to 660.420] **192.2203 to 192.2227** for a
11 period of three years after such conviction.

[660.620.] **192.2250.** 1. There is hereby established an "Office of Advocacy and
2 Assistance for Senior Citizens" within the office of lieutenant governor.

3 2. The senior citizen advocate shall coordinate activities with the long-term care
4 ombudsman program, as defined in section [660.600] **198.700**, on complaints made by or on
5 behalf of senior citizens residing in long-term care facilities.

6 3. The senior citizen advocate shall conduct a suitable investigation into any actions
7 complained of unless the senior citizen advocate finds that the complaint pertains to a matter
8 outside the scope of the authority of the senior citizen advocate, the complainant has no

9 substantive or procedural interest which is directly affected by the matter complained about, or
10 the complaint is trivial, frivolous, vexatious or not made in good faith.

11 4. After completing his investigation of a complaint, the senior citizen advocate shall
12 inform the complainant, the agency, official or employee of action recommended by the senior
13 citizen advocate. The senior citizen advocate shall make such reports and recommendations to
14 the affected agencies, the governor and the general assembly as he deems necessary to further
15 the purposes of sections [660.620 and 660.625] **192.2250 and 192.2253.**

16 5. The senior citizen advocate shall, in conjunction with the division of senior services,
17 act as a clearinghouse for information pertaining to and of interest to senior citizens and shall
18 disseminate such information as is necessary to inform senior citizens of their rights and of
19 governmental and nongovernmental services available to them.

[660.625.] **192.2253.** The senior citizen advocate shall maintain confidentiality with
2 respect to all matters, including the identities of the complainants or witnesses coming before
3 the senior citizen advocate unless the complainant consents to the use of his or her name in the
4 course of the investigation.

198.006. As used in sections 198.003 to 198.186, unless the context clearly indicates
2 otherwise, the following terms mean:

3 (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm; **including**
4 **financial exploitation by any person, firm, or corporation;**

5 (2) "Administrator", the person who is in general administrative charge of a facility;

6 (3) "Affiliate":
7

(a) With respect to a partnership, each partner thereof;

8 (b) With respect to a limited partnership, the general partner and each limited partner
9 with an interest of five percent or more in the limited partnership;

10 (c) With respect to a corporation, each person who owns, holds or has the power to vote
11 five percent or more of any class of securities issued by the corporation, and each officer and
12 director;

13 (d) With respect to a natural person, any parent, child, sibling, or spouse of that person;

14 (4) "Department", the Missouri department of health and senior services;

15 (5) "Emergency", a situation, physical condition or one or more practices, methods or
16 operations which presents imminent danger of death or serious physical or mental harm to
17 residents of a facility;

18 (6) "Facility", any residential care facility I, residential care facility II, immediate care
19 facility, or skilled nursing facility;

20 (7) "Health care provider", any person providing health care services or goods to
21 residents and who receives funds in payment for such goods or services under Medicaid;

22 (8) "Intermediate care facility", any premises, other than a residential care facility I,
23 residential care facility II, or skilled nursing facility, which is utilized by its owner, operator, or
24 manager to provide twenty-four hour accommodation, board, personal care, and basic health and
25 nursing care services under the daily supervision of a licensed nurse and under the direction of
26 a licensed physician to three or more residents dependent for care and supervision and who are
27 not related within the fourth degree of consanguinity or affinity to the owner, operator or
28 manager of the facility;

29 (9) "Manager", any person other than the administrator of a facility who contracts or
30 otherwise agrees with an owner or operator to supervise the general operation of a facility,
31 providing such services as hiring and training personnel, purchasing supplies, keeping financial
32 records, and making reports;

33 (10) "Medicaid", medical assistance under section 208.151, RSMo, et seq., in
34 compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social Security Act (42
35 U.S.C. 301 et seq.), as amended;

36 (11) "Neglect", the failure to provide, by those responsible for the care, custody, and
37 control of a resident in a facility, the services which are reasonable and necessary to maintain the
38 physical and mental health of the resident, when such failure presents either an imminent danger
39 to the health, safety or welfare of the resident or a substantial probability that death or serious
40 physical harm would result;

41 (12) "Operator", any person licensed or required to be licensed under the provisions of
42 sections 198.003 to 198.096 in order to establish, conduct or maintain a facility;

43 (13) "Owner", any person who owns an interest of five percent or more in:

44 (a) The land on which any facility is located;

45 (b) The structure or structures in which any facility is located;

46 (c) Any mortgage, contract for deed, or other obligation secured in whole or in part by
47 the land or structure in or on which a facility is located; or

48 (d) Any lease or sublease of the land or structure in or on which a facility is located.
49

50 "Owner" does not include a holder of a debenture or bond purchased at public issue nor does it
51 include any regulated lender unless the entity or person directly or through a subsidiary operates
52 a facility;

53 (14) "Protective oversight", an awareness twenty-four hours a day of the location of a
54 resident, the ability to intervene on behalf of the resident, the supervision of nutrition,
55 medication, or actual provisions of care, and the responsibility for the welfare of the resident,
56 except where the resident is on voluntary leave;

57 (15) "Resident", a person who by reason of aging, illness, disease, or physical or mental
58 infirmity receives or requires care and services furnished by a facility and who resides or boards
59 in or is otherwise kept, cared for, treated or accommodated in such facility for a period exceeding
60 twenty-four consecutive hours;

61 (16) "Residential care facility I", any premises, other than a residential care facility II,
62 intermediate care facility, or skilled nursing facility, which is utilized by its owner, operator or
63 manager to provide twenty-four hour care to three or more residents, who are not related within
64 the fourth degree of consanguinity or affinity to the owner, operator, or manager of the facility
65 and who need or are provided with shelter, board, and with protective oversight, which may
66 include storage and distribution or administration of medications and care during short-term
67 illness or recuperation;

68 (17) "Residential care facility II", any premises, other than a residential care facility I,
69 an intermediate care facility, or a skilled nursing facility, which is utilized by its owner, operator
70 or manager to provide twenty-four hour accommodation, board, and care to three or more
71 residents who are not related within the fourth degree of consanguinity or affinity to the owner,
72 operator, or manager of the facility, and who need or are provided with supervision of diets,
73 assistance in personal care, storage and distribution or administration of medications, supervision
74 of health care under the direction of a licensed physician, and protective oversight, including care
75 during short-term illness or recuperation;

76 (18) "Skilled nursing facility", any premises, other than a residential care facility I, a
77 residential care facility II, or an intermediate care facility, which is utilized by its owner, operator
78 or manager to provide for twenty-four hour accommodation, board and skilled nursing care and
79 treatment services to at least three residents who are not related within the fourth degree of
80 consanguinity or affinity to the owner, operator or manager of the facility. Skilled nursing care
81 and treatment services are those services commonly performed by or under the supervision of
82 a registered professional nurse for individuals requiring twenty-four hours a day care by licensed
83 nursing personnel including acts of observation, care and counsel of the aged, ill, injured or
84 infirm, the administration of medications and treatments as prescribed by a licensed physician
85 or dentist, and other nursing functions requiring substantial specialized judgment and skill;

86 (19) "Vendor", any person selling goods or services to a health care provider;

87 (20) "Voluntary leave", an off-premise leave initiated by:

88 (a) A resident that has not been declared mentally incompetent or incapacitated by a
89 court; or

90 (b) A legal guardian of a resident that has been declared mentally incompetent or
91 incapacitated by a court.

198.532. 1. Complaints filed with the department of health and senior services against
2 a long-term care facility which allege that harm has occurred or is likely to occur to a resident
3 or residents of the facility due to actions or the lack of actions taken by the facility shall be
4 investigated within thirty days of receipt of such complaints. The purpose of such investigation
5 shall be to ensure the safety, protection and care of all residents of the facility likely to be
6 affected by the alleged action or inaction. Such investigation shall be in addition to the
7 investigation requirements for abuse and neglect reports pursuant to section [198.070] **192.2150,**
8 **RSMo.**

9 2. The department shall provide the results of all investigations in accordance with
10 section [660.320] **192.2150,** RSMo. The department shall provide the results of such
11 investigation in writing to all parties to the complaint, and if requested, to any of the facility's
12 residents, or their family members or guardians. Complaints and written results will be readily
13 available for public access and review at the department of health and senior services and at the
14 long-term care facility. Personal information identifying the resident will be blanked out, except
15 in regard to immediate family, the attorney-in-fact or the legal guardian of the resident in
16 question. This information will remain readily available for a period of time determined by the
17 department of health and senior services.

[660.600.] **198.700.** As used in sections [660.600 to 660.608] **198.700 to 198.708,** the
2 following terms mean:

3 (1) "Division", the division of aging of the department of [social] **health and senior**
4 services;

5 (2) "Long-term care facility", any facility licensed pursuant to chapter 198, RSMo, and
6 long-term care facilities connected with hospitals licensed pursuant to chapter 197, RSMo;

7 (3) "Office", the office of the state ombudsman for long-term care facility residents;

8 (4) "Ombudsman", the state ombudsman for long-term care facility residents;

9 (5) "Regional ombudsman coordinators", designated individuals working for, or under
10 contract with, the area agencies on aging, and who are so designated by the area agency on aging
11 and certified by the ombudsman as meeting the qualifications established by the
12 [division] **department;**

13 (6) "Resident", any person who is receiving care or treatment in a long-term care facility.

[660.603.] **198.703.** 1. There is hereby established within the department of health and
2 senior services the "Office of State Ombudsman for Long-Term Care Facility Residents", for the
3 purpose of helping to assure the adequacy of care received by residents of long-term care
4 facilities and to improve the quality of life experienced by them, in accordance with the federal
5 Older Americans Act, 42 U.S.C. 3001, et seq.

6 2. The office shall be administered by the state ombudsman, who shall devote his or her
7 entire time to the duties of his or her position.

8 3. The office shall establish and implement procedures for receiving, processing,
9 responding to, and resolving complaints made by or on behalf of residents of long-term care
10 facilities relating to action, inaction, or decisions of providers, or their representatives, of
11 long-term care services, of public agencies or of social service agencies, which may adversely
12 affect the health, safety, welfare or rights of such residents.

13 4. The department shall establish and implement procedures for resolution of complaints.
14 The ombudsman or representatives of the office shall have the authority to:

15 (1) Enter any long-term care facility and have access to residents of the facility at a
16 reasonable time and in a reasonable manner. The ombudsman shall have access to review
17 resident records, if given permission by the resident or the resident's legal guardian. Residents
18 of the facility shall have the right to request, deny, or terminate visits with an ombudsman;

19 (2) Make the necessary inquiries and review such information and records as the
20 ombudsman or representative of the office deems necessary to accomplish the objective of
21 verifying these complaints.

22 5. The office shall acknowledge complaints, report its findings, make recommendations,
23 gather and disseminate information and other material, and publicize its existence.

24 6. The ombudsman may recommend to the relevant governmental agency changes in the
25 rules and regulations adopted or proposed by such governmental agency which do or may
26 adversely affect the health, safety, welfare, or civil or human rights of any resident in a facility.
27 The office shall analyze and monitor the development and implementation of federal, state and
28 local laws, regulations and policies with respect to long-term care facilities and services in the
29 state and shall recommend to the department changes in such laws, regulations and policies
30 deemed by the office to be appropriate.

31 7. The office shall promote community contact and involvement with residents of
32 facilities through the use of volunteers and volunteer programs directed by the regional
33 ombudsman coordinators.

34 8. The office shall develop and establish by regulation of the department statewide
35 policies and standards for implementing the activities of the ombudsman program, including the
36 qualifications and the training of regional ombudsman coordinators and ombudsman volunteers.

37 9. The office shall develop and propose programs for use, training and coordination of
38 volunteers in conjunction with the regional ombudsman coordinators and may:

39 (1) Establish and conduct recruitment programs for volunteers;

40 (2) Establish and conduct training seminars, meetings and other programs for volunteers;

41 and

42 (3) Supply personnel, written materials and such other reasonable assistance, including
43 publicizing their activities, as may be deemed necessary.

44 10. The regional ombudsman coordinators and ombudsman volunteers shall have the
45 authority to report instances of abuse and neglect to the ombudsman hotline operated by the
46 department.

47 11. If the regional ombudsman coordinator or volunteer finds that a nursing home
48 administrator is not willing to work with the ombudsman program to resolve complaints, the
49 state ombudsman shall be notified. The department shall establish procedures by rule in
50 accordance with chapter 536, RSMo, for implementation of this subsection.

51 12. The office shall prepare and distribute to each facility written notices which set forth
52 the address and telephone number of the office, a brief explanation of the function of the office,
53 the procedure to follow in filing a complaint and other pertinent information.

54 13. The administrator of each facility shall ensure that such written notice is given to
55 every resident or the resident's guardian upon admission to the facility and to every person
56 already in residence, or to his guardian. The administrator shall also post such written notice in
57 a conspicuous, public place in the facility in the number and manner set forth in the regulations
58 adopted by the department.

59 14. The office shall inform residents, their guardians or their families of their rights and
60 entitlements under state and federal laws and rules and regulations by means of the distribution
61 of educational materials and group meetings.

[660.605.] **198.705.** 1. Any files maintained by the ombudsman program shall be
2 disclosed only at the discretion of the ombudsman having authority over the disposition of such
3 files, except that the identity of any complainant or resident of a long-term care facility shall not
4 be disclosed by such ombudsman unless:

5 (1) Such complainant or resident, or the complainant's or resident's legal representative,
6 consents in writing to such disclosure; or

7 (2) Such disclosure is required by court order.

8 2. Any representative of the office conducting or participating in any examination of a
9 complaint who shall knowingly and willfully disclose to any person other than the office, or
10 those authorized by the office to receive it, the name of any witness examined or any information
11 obtained or given upon such examination, shall be guilty of a class A misdemeanor. However,
12 the ombudsman conducting or participating in any examination of a complaint shall disclose the
13 final result of the examination to the facility with the consent of the resident.

14 3. Any statement or communication made by the office relevant to a complaint received
15 by, proceedings before or activities of the office and any complaint or information made or

16 provided in good faith by any person, shall be absolutely privileged and such person shall be
17 immune from suit.

18 4. The office shall not be required to testify in any court with respect to matters held to
19 be confidential in this section except as the court may deem necessary to enforce the provisions
20 of sections [660.600 to 660.608] **198.700 to 198.708**, or where otherwise required by court order.

[660.608.] **198.708.** 1. Any regional coordinator or local program staff, whether an
2 employee or an unpaid volunteer, shall be treated as a representative of the office. No
3 representative of the office shall be held liable for good faith performance of his **or her** official
4 duties under the provisions of sections [660.600 to 660.608] **198.700 to 198.708** and shall be
5 immune from suit for the good faith performance of such duties. Every representative of the
6 office shall be considered a state employee under section 105.711, RSMo.

7 2. No reprisal or retaliatory action shall be taken against any resident or employee of a
8 long-term care facility for any communication made or information given to the office. Any
9 person who knowingly or willfully violates the provisions of this subsection shall be guilty of
10 a class A misdemeanor. Any person who serves or served on a quality assessment and assurance
11 committee required under 42 U.S.C. sec. 1396r(b)(1)(B) and 42 CFR sec. 483.75(r), or as
12 amended, shall be immune from civil liability only for acts done directly as a member of such
13 committee so long as the acts are performed in good faith, without malice and are required by
14 the activities of such committee as defined in 42 CFR sec. 483.75(r).

208.909. 1. Consumers receiving personal care assistance services shall be responsible
2 for:

- 3 (1) Supervising their personal care attendant;
- 4 (2) Verifying wages to be paid to the personal care attendant;
- 5 (3) Preparing and submitting time sheets, signed by both the consumer and personal care
6 attendant, to the vendor on a biweekly basis;
- 7 (4) Promptly notifying the department within ten days of any changes in circumstances
8 affecting the personal care assistance services plan or in the consumer's place of residence; and
- 9 (5) Reporting any problems resulting from the quality of services rendered by the
10 personal care attendant to the vendor. If the consumer is unable to resolve any problems
11 resulting from the quality of service rendered by the personal care attendant with the vendor, the
12 consumer shall report the situation to the department.

13 2. Participating vendors shall be responsible for:

- 14 (1) Collecting time sheets and certifying their accuracy;
- 15 (2) The Medicaid reimbursement process, including the filing of claims and reporting
16 data to the department as required by rule;

17 (3) Transmitting the individual payment directly to the personal care attendant on behalf
18 of the consumer;

19 (4) Monitoring the performance of the personal care assistance services plan.

20 3. No state or federal financial assistance shall be authorized or expended to pay for
21 services provided to a consumer under sections 208.900 to 208.927, if the primary benefit of the
22 services is to the household unit, or is a household task that the members of the consumer's
23 household may reasonably be expected to share or do for one another when they live in the same
24 household, unless such service is above and beyond typical activities household members may
25 reasonably provide for another household member without a disability.

26 4. No state or federal financial assistance shall be authorized or expended to pay for
27 personal care assistance services provided by a personal care attendant who is listed on **the**
28 **employee disqualification list maintained by the department of health and senior services**
29 **under section 192.2150, RSMo, or** any of the background check lists in the family care safety
30 registry under sections 210.900 to 210.937, RSMo, unless a good cause waiver is first obtained
31 from the department in accordance with section 660.317, RSMo.

210.906. 1. Every child-care worker or elder-care worker hired on or after January 1,
2 2001, or personal-care worker hired on or after January 1, 2002, shall complete a registration
3 form provided by the department. The department shall make such forms available no later than
4 January 1, 2001, and may, by rule, determine the specific content of such form, but every form
5 shall:

6 (1) Request the valid Social Security number of the applicant;

7 (2) Include information on the person's right to appeal the information contained in the
8 registry pursuant to section 210.912;

9 (3) Contain the signed consent of the applicant for the background checks required
10 pursuant to this section; and

11 (4) Contain the signed consent for the release of information contained in the
12 background check for employment purposes only.

13 2. Every child-care worker or elder-care worker hired on or after January 1, 2001, and
14 every personal-care worker hired on or after January 1, 2002, shall complete a registration form
15 within fifteen days of the beginning of such person's employment. Any person employed as a
16 child-care, elder-care or personal-care worker who fails to submit a completed registration form
17 to the department of health and senior services as required by sections 210.900 to 210.936
18 without good cause, as determined by the department, is guilty of a class B misdemeanor.

19 3. The costs of the criminal background check may be paid by the individual applicant,
20 or by the provider if the applicant is so employed, or for those applicants receiving public
21 assistance, by the state through the terms of the self-sufficiency pact pursuant to section 208.325,

22 RSMo. Any moneys remitted to the patrol for the costs of the criminal background check shall
23 be deposited to the credit of the criminal record system fund as required by section 43.530,
24 RSMo.

25 4. Any person licensed pursuant to sections 210.481 to 210.565 shall be automatically
26 registered in the family care safety registry at no additional cost other than the costs required
27 pursuant to sections 210.481 to 210.565.

28 5. Any person not required to register pursuant to the provisions of sections 210.900 to
29 210.936 may also be included in the registry if such person voluntarily applies to the department
30 for registration and meets the requirements of this section and section 210.909, including
31 submitting to the background checks in subsection 1 of section 210.909.

32 6. The provisions of sections 210.900 to 210.936 shall not extend to related child care,
33 related elder care or related personal care **workers or attendants who do not receive state or**
34 **federal moneys for services.**

407.991. As used in sections 407.991 to 407.996 the following terms shall mean:

2 (1) **"Claimant", a person who has or purports to have a claim for money or an**
3 **interest in property in connection with a transaction procured through identity theft;**

4 (2) **"Identity theft", the unauthorized use of another person's personal identifying**
5 **information to obtain credit, goods, services, money, or property;**

6 (3) **"Personal identifying information", a person's name, address, telephone**
7 **number, driver's license number, Social Security number, place of employment, employee**
8 **identification number, mother's maiden name, demand deposit account identification**
9 **number, savings account number, or credit card number;**

10 (4) **"Victim of identity theft", a person who had his or her personal identifying**
11 **information used without authorization by another to obtain credit, goods, services, money,**
12 **or property obtained by the identity theft, and filed a police report in this regard under**
13 **section 570.223, RSMo.**

407.992. 1. A person may bring an action against a claimant to establish that the
2 **person is a victim of identity theft in connection with the claimant's claim against that**
3 **person. If the claimant has brought an action to recover on its claim against the person,**
4 **the person may file a cross-complaint to establish that the person is a victim of identity**
5 **theft in connection with the claimant's claim.**

6 2. A person shall establish that he or she is a victim of identity theft by a
7 preponderance of the evidence.

8 3. A person who proves that he or she is a victim of identity theft, as defined in
9 section 570.223, RSMo, as to a particular claim, shall be entitled to a judgment providing
10 all of the following, as appropriate:

- 11 (1) A declaration that he or she is not obligated to the claimant on that claim;
- 12 (2) A declaration that any security interest or other interest the claimant had
13 purportedly obtained in the victim's property in connection with that claim is void;
- 14 (3) An injunction restraining the claimant from collecting or attempting to collect
15 from the victim on that claim, from enforcing or attempting to enforce any security interest
16 or other interest in the victim's property in connection with that claim, or from enforcing
17 or executing on any judgment against the victim on that claim;
- 18 (4) If the victim has filed a cross-complaint against the claimant, the dismissal of
19 any cause of action in the complaint filed by the claimant based on a claim which arose as
20 a result of the identity theft;
- 21 (5) Actual damages, attorney's fees, and costs, and any equitable relief that the
22 court deems appropriate. In order to recover actual damages or attorney's fees in an
23 action or cross-complaint filed by a person alleging that he or she is a victim of identity
24 theft, the person shall show that he or she provided written notice to the claimant that a
25 situation of identity theft might exist, including, upon written request of the claimant, a
26 valid copy of the police report at least thirty days prior to his or her filing of the action, or
27 within his or her cross-complaint under this section;
- 28 (6) A civil penalty, in addition to any other damages, of up to thirty thousand
29 dollars if the victim establishes by clear and convincing evidence all of the following:
- 30 (a) That at least thirty days prior to filing an action or within the cross-complaint
31 under this section, he or she provided written notice to the claimant at the address
32 designated by the claimant for complaints related to credit reporting issues that a situation
33 of identity theft might exist and explaining the basis for that belief;
- 34 (b) That the claimant failed to diligently investigate the victim's notification of a
35 possible identity theft; and
- 36 (c) That the claimant continued to pursue its claim against the victim after the
37 claimant was presented with facts that were later held to entitle the victim to a judgment
38 under this section.

407.993. An action or cross-complaint brought under sections 407.991 to 407.996
2 that joins other claimants as defendants in the same action or cross-complaint shall be
3 deemed to comply with the provisions of chapter 507, RSMo, regarding joinder of parties.

407.995. Any action brought under sections 407.991 to 407.996 may be brought
2 within four years of the date the person who alleges that he or she is a victim of identity
3 theft knew or, in the exercise of reasonable diligence, should have known of the existence
4 of facts which would give rise to the bringing of the action or joinder of the defendant.

407.996. 1. Nothing in sections 407.991 to 407.996 shall be construed to affect a
2 claimant's rights and remedies against a person who perpetrates identity theft or against
3 any person who used or possessed the credit, goods, services, or property obtained by
4 identity theft.

5 2. Sections 407.991 to 407.996 are cumulative to the rights and remedies provided
6 under other laws.

442.700. As used in sections 442.700 to 442.712, unless the context clearly otherwise
2 indicates, the following terms shall mean:

3 (1) "Dependent", with respect to an elderly or disabled person, wholly or partially
4 dependent upon one or more persons for care or support, either emotional or physical,
5 because the elderly person or disabled person:

6 (a) Suffers from a significant limitation in mobility, vision, hearing, emotional or
7 mental functioning, or the ability to read or write; or

8 (b) Is suffering or recovering from a major illness or is facing or recovering from
9 major surgery;

10 (2) "Disabled person", the same meaning as such term is defined in section 570.145,
11 RSMo;

12 (3) "Elderly person", the same meaning as such term is defined in section 570.145,
13 RSMo;

14 (4) "Independent counsel", an attorney retained by the elderly or disabled person
15 to represent only such person's interests in the transfer;

16 (5) "Less than full consideration", with respect to a transfer of property, the
17 transferee pays less than fair market value for the property or the transfer is supported by
18 past consideration;

19 (6) "Major transfer of personal property or money", a transfer of money or items
20 of personal property which represent ten percent or more of the elderly or disabled
21 person's estate;

22 (7) "Transfer", does not include testamentary transfers which are outside the scope
23 of sections 442.700 to 442.712.

442.703. 1. In any transfer of real property or major transfer of personal property
2 or money for less than full consideration or execution of a guaranty by an elderly or
3 disabled person who is dependent on others to another person with whom the elderly or
4 disabled person has a confidential or fiduciary relationship, it is presumed that the transfer
5 or execution was the result of undue influence, unless the elderly or disabled person was
6 represented in the transfer or execution by independent counsel. When the elderly or
7 disabled person successfully raises the presumption of undue influence by a preponderance

8 of the evidence and when the transferee or person who benefits from the execution of a
9 guaranty fails to rebut the presumption, the elderly or disabled person is entitled to avoid
10 the transfer or execution and entitled to the relief set forth in section 442.709.

11 2. For purposes of this section, the transfer of property or execution of a guaranty
12 is deemed to have been made in the context of a confidential or fiduciary relationship if the
13 transferee or person who benefits from the execution of a guaranty had a close relationship
14 with the elderly or disabled person prior to the transfer or execution. Confidential or
15 fiduciary relationships include, but are not limited to, the following:

16 (1) A family relationship between the elderly or disabled person and the transferee
17 or person who benefits from the execution of a guaranty, including relationships by
18 marriage and adoption;

19 (2) A fiduciary relationship between the elderly or disabled person and the
20 transferee or person who benefits from the execution of a guaranty, such as with a
21 guardian, conservator, trustee, accountant, broker, or financial advisor;

22 (3) A relationship between the elderly or disabled person and a physician, nurse,
23 or other medical or health care provider;

24 (4) A relationship between the elderly or disabled person and a psychologist,
25 psychiatrist, social worker, or counselor;

26 (5) A relationship between the elderly or disabled person and an attorney;

27 (6) A relationship between the elderly or disabled person and a priest, minister,
28 rabbi, or spiritual advisor;

29 (7) A relationship between the elderly or disabled person and an individual who
30 provides care or services to such person whether or not care or services are paid for the
31 elderly or disabled person;

32 (8) A relationship between the elderly or disabled person and a friend or neighbor;
33 or

34 (9) A relationship between the elderly or disabled person and an individual sharing
35 the same living quarters.

36

37 When any such relationships exist and when a transfer or execution is made to a
38 corporation or organization primarily on account of the membership, ownership, or
39 employment interest or for the benefit of the fiduciary or confidante, a fiduciary or
40 confidential relationship with the corporation or organization is deemed to exist.

442.706. 1. A civil action may be brought to obtain relief under sections 442.700
2 to 442.712 by an elderly or disabled person, such person's legal representative, or the
3 personal representative of the estate of an elderly or disabled person.

4 **2. When a court finds that a transfer of property or execution of a guaranty was**
5 **the result of undue influence, the court shall grant appropriate relief enabling the elderly**
6 **or disabled person to avoid the transfer or execution, including the rescission or**
7 **reformation of a deed or other instrument, the imposition of a constructive trust on**
8 **property, or an order enjoining use of or entry on property, or commanding the return of**
9 **property. When the court finds that undue influence is a good and valid defense to a**
10 **transferee's suit on a contract to transfer the property or a suit of a person who benefits**
11 **from the execution of a guaranty on such guaranty, the court shall refuse to enforce the**
12 **transfer or guaranty.**

13 **3. No relief obtained or granted under this section may in any way affect or limit**
14 **the right, title, and interest of good faith purchasers, mortgages, holders of security**
15 **interests, or other third parties who obtain an interest in the transferred property for value**
16 **after its transfer from the elderly or disabled person. No relief obtained or granted under**
17 **this section shall affect any mortgage deed to the extent of value given by the mortgagee.**

442.709. Nothing in sections 442.700 to 442.712 shall be construed to abrogate any
2 **other causes of action or relief at law or equity to which elderly or disabled persons are**
3 **entitled under laws or at common law.**

442.712. Sections 442.700 to 442.712 shall not require that language showing
2 **compliance with sections 442.700 to 442.712 be included in a deed and shall not require**
3 **that evidence of compliance with sections 442.700 to 442.712 be recorded in the registry of**
4 **deeds. Any attempt to record such evidence is void and has no effect on title.**

 559.100. 1. The circuit courts of this state shall have power, herein provided, to place
2 on probation or to parole persons convicted of any offense over which they have jurisdiction,
3 except as otherwise provided in sections 195.275 to 195.296, [RSMo, section] 558.018, [RSMo,
4 section] **559.115**, 565.020, [RSMo, section] **565.180, 565.182, 565.200, 570.145, and 571.015**,
5 [RSMo, and section 559.115] RSMo.

6 2. The circuit court shall have the power to revoke the probation or parole previously
7 granted and commit the person to the department of corrections. The circuit court shall
8 determine any conditions of probation or parole for the defendant that it deems necessary to
9 ensure the successful completion of the probation or parole term, including the extension of any
10 term of supervision for any person while on probation or parole. The circuit court may require
11 that the defendant pay restitution for his crime. The probation or parole may be revoked for
12 failure to pay restitution or for failure to conform his behavior to the conditions imposed by the
13 circuit court. The circuit court may, in its discretion, credit any period of probation or parole as
14 time served on a sentence.

2 565.180. 1. A person commits the crime of elder abuse in the first degree if he attempts
3 to kill, knowingly causes or attempts to cause serious physical injury, as defined in section
4 565.002, to any person sixty years of age or older or an eligible adult as defined in section
5 660.250, RSMo.

6 2. Elder abuse in the first degree is a class A felony.

7 **3. No court may suspend the imposition or execution of sentence or impose a fine**
8 **in lieu of a term of imprisonment when a person pleads guilty to or is found guilty of elder**
9 **abuse in the first degree.**

10 565.182. 1. A person commits the crime of elder abuse in the second degree if he:

11 (1) Knowingly causes, attempts to cause physical injury to any person sixty years of age
12 or older or an eligible adult, as defined in section 660.250, RSMo, by means of a deadly weapon
13 or dangerous instrument; or

14 (2) Recklessly [and purposely] causes serious physical injury, as defined in section
15 565.002, to a person sixty years of age or older or an eligible adult as defined in section 660.250,
16 RSMo.

17 2. Elder abuse in the second degree is a class B felony.

18 **3. No court may suspend the imposition or execution of sentence or impose a fine**
19 **in lieu of a term of imprisonment when a person pleads guilty to or is found guilty**
20 **pursuant to subdivision 1 of subsection 1.**

21 565.184. 1. A person commits the crime of elder abuse in the third degree if he:

22 (1) Knowingly causes or attempts to cause physical contact with any person sixty years
23 of age or older or an eligible adult as defined in section 660.250, RSMo, knowing the other
24 person will regard the contact as harmful or provocative; or

25 (2) Purposely engages in conduct involving more than one incident that causes grave
26 emotional distress to a person sixty years of age or older or an eligible adult, as defined in section
27 660.250, RSMo. The course of conduct shall be such as would cause a reasonable person age
28 sixty years of age or older or an eligible adult, as defined in section 660.250, RSMo, to suffer
29 substantial emotional distress; or

30 (3) Purposely or knowingly places a person sixty years of age or older or an eligible
31 adult, as defined in section 660.250, RSMo, in apprehension of immediate physical injury; or

32 (4) Intentionally fails to provide care, goods or services to a person sixty years of age or
33 older or an eligible adult, as defined in section 660.250, RSMo. The cause of the conduct shall
34 be such as would cause a reasonable person age sixty or older or an eligible adult, as defined in
35 section 660.250, RSMo, to suffer physical or emotional distress; or

16 (5) Knowingly acts or knowingly fails to act in a manner which results in a grave risk
17 to the life, body or health of a person sixty years of age or older or an eligible adult, as defined
18 in section 660.250, RSMo.

19 2. Elder abuse in the third degree is a class [A misdemeanor] **D felony**.

565.188. 1. When any adult day care worker; chiropractor; Christian Science
2 practitioner; coroner; dentist; embalmer; employee of the departments of social services, mental
3 health, or health and senior services; employee of a local area agency on aging or an organized
4 area agency on aging program; funeral director; home health agency or home health agency
5 employee; hospital and clinic personnel engaged in examination, care, or treatment of persons;
6 in-home services owner, provider, operator, or employee; law enforcement officer; long-term
7 care facility administrator or employee; medical examiner; medical resident or intern; mental
8 health professional; minister; nurse; nurse practitioner; optometrist; other health practitioner;
9 peace officer; pharmacist; physical therapist; physician; physician's assistant; podiatrist;
10 probation or parole officer; psychologist; social worker; or other person with responsibility for
11 the care of a person sixty years of age or older has reasonable cause to suspect that such a person
12 has been subjected to abuse or neglect, **or financial exploitation**, or observes such a person
13 being subjected to conditions or circumstances which would reasonably result in abuse or
14 neglect, **or financial exploitation**, he or she shall immediately report or cause a report to be
15 made to the department in accordance with the provisions of sections 660.250 to 660.295,
16 RSMo. Any other person who becomes aware of circumstances which may reasonably be
17 expected to be the result of or result in abuse or neglect, **or financial exploitation** may report
18 to the department.

19 2. Any person who knowingly fails to make a report as required in subsection 1 of this
20 section is guilty of a class A misdemeanor.

21 3. Any person who purposely files a false report of elder abuse or neglect **or financial**
22 **exploitation of the elderly** is guilty of a class A misdemeanor.

23 4. Every person who has been previously convicted of or pled guilty to making a false
24 report to the department and who is subsequently convicted of making a false report under
25 subsection 3 of this section is guilty of a class D felony.

26 5. Evidence of prior convictions of false reporting shall be heard by the court, out of the
27 hearing of the jury, prior to the submission of the case to the jury, and the court shall determine
28 the existence of the prior convictions.

565.200. 1. Any owner or employee of a skilled nursing facility, as defined in section
2 198.006, RSMo, or an Alzheimer's special unit or program, as defined in section 198.505,
3 RSMo, who:

4 (1) Has sexual contact, as defined in section 566.010, RSMo, with a resident is guilty
5 of a class [B] **A misdemeanor**. Any person who commits a second or subsequent violation of
6 this subdivision is guilty of a class [A misdemeanor] **D felony**; or

7 (2) Has sexual intercourse or deviate sexual intercourse, as defined in section 566.010,
8 RSMo, with a resident is guilty of a class [A misdemeanor] **C felony**. Any person who commits
9 a second or subsequent violation of this subdivision is guilty of a class [D] **B felony**. **No court**
10 **may suspend the imposition or execution of sentence or impose a fine in lieu of a term of**
11 **imprisonment when a person pleads guilty to or is found guilty of committing a second or**
12 **subsequent violation of this subdivision.**

13 2. The provisions of this section shall not apply to an owner or employee of a skilled
14 nursing facility or Alzheimer's special unit or program who engages in sexual conduct, as defined
15 in section 566.010, RSMo, with a resident to whom the owner or employee is married.

16 3. Consent of the victim is not a defense to a prosecution pursuant to this section.

565.320. 1. As used in this section the following terms shall mean:

2 (1) "Crime of violence", any crime which involved the threat or use of physical
3 force against an elderly person;

4 (2) "Elderly", a person sixty-five years of age or older.

5 2. Notwithstanding any other provision of law no court shall sentence a person who
6 has pled guilty or nolo contendere to or has been found guilty of a crime of violence against
7 the elderly to a term of imprisonment of less than thirty consecutive days or to pay a fine
8 in lieu of a term of imprisonment, nor shall such person be eligible for parole or probation
9 until he or she has served a minimum of thirty consecutive days of imprisonment.

570.145. 1. A person commits the crime of financial exploitation of an elderly or
2 disabled person if such person knowingly and by deception, intimidation, or force obtains control
3 over the elderly or disabled person's property with the intent to permanently deprive the elderly
4 or disabled person of the use, benefit or possession of his or her property thereby benefiting such
5 person or detrimentally affecting the elderly or disabled person. Financial exploitation of an
6 elderly or disabled person is a class A misdemeanor if the value of the property is less than fifty
7 dollars[,] ; a class D felony if the value of the property is fifty dollars but less than five hundred
8 dollars[,] ; a class C felony if the value of the property is five hundred dollars but less than one
9 thousand dollars[,] ; a class B felony if the value of the property is one thousand dollars [but less
10 than fifty thousand dollars, and a class A felony if the value of the property is fifty thousand
11 dollars] or more. **No court may suspend the imposition or execution of sentence or impose**
12 **a fine in lieu of a term of imprisonment when a person pleads guilty to or is found guilty**
13 **of a violation of this section when punishable as a class B felony.**

14 2. For purposes of this section, the following terms mean:

15 (1) "Deception", a misrepresentation or concealment of material fact relating to the terms
16 of a contract or agreement entered into with the elderly or disabled person or to the existing or
17 preexisting condition of any of the property involved in such contract or agreement, or the use
18 or employment of any misrepresentation, false pretense or false promise in order to induce,
19 encourage or solicit the elderly or disabled person to enter into a contract or agreement.
20 Deception includes:

21 (a) Creating or confirming another person's impression which is false and which the
22 offender does not believe to be true; or

23 (b) Failure to correct a false impression which the offender previously has created or
24 confirmed; or

25 (c) Preventing another person from acquiring information pertinent to the disposition of
26 the property involved; or

27 (d) Selling or otherwise transferring or encumbering property, failing to disclose a lien,
28 adverse claim or other legal impediment to the enjoyment of the property, whether such
29 impediment is or is not valid, or is or is not a matter of official record; or

30 (e) Promising performance which the offender does not intend to perform or knows will
31 not be performed. Failure to perform standing alone is not sufficient evidence to prove that the
32 offender did not intend to perform;

33 (2) "Disabled person", a person with a mental, physical, or developmental disability that
34 substantially impairs the person's ability to provide adequately for the person's care or protection;

35 (3) "Elderly person", a person sixty years of age or older;

36 (4) "Intimidation", a threat of physical or emotional harm to an elderly or disabled
37 person, or the communication to an elderly or disabled person that he or she will be deprived of
38 food and nutrition, shelter, prescribed medication, or medical care and treatment.

39 3. Nothing in this section shall be construed to limit the remedies available to the victim
40 pursuant to any state law relating to domestic violence.

41 4. Nothing in this section shall be construed to impose criminal liability on a person who
42 has made a good faith effort to assist the elderly or disabled person in the management of his or
43 her property, but through no fault of his or her own has been unable to provide such assistance.

44 5. Nothing in this section shall limit the ability to engage in bona fide estate planning,
45 to transfer property and to otherwise seek to reduce estate and inheritance taxes; provided that
46 such actions do not adversely impact the standard of living to which the elderly or disabled
47 person has become accustomed at the time of such actions.

48 6. It shall not be a defense to financial exploitation of an elderly or disabled person that
49 the accused reasonably believed that the victim was not an elderly or disabled person.

2 [197.500. 1. The department shall maintain an employee disqualification
3 list and place on the employee disqualification list the names of any persons who
4 are or who have been employed by any entity licensed pursuant to this chapter
5 and who have been finally determined by the department pursuant to section
6 660.315, RSMo, to have knowingly or recklessly abused or neglected a patient.
7 For the purpose of this section, "abuse" and "neglect" shall have the same
8 meanings as such terms are defined in section 198.006, RSMo. For purposes of
9 this section only, "knowingly" and "recklessly" shall have the meanings that are
10 ascribed to them in this section. A person acts "knowingly" with respect to the
11 person's conduct when a reasonable person should be aware of the result caused
12 by his or her conduct. A person acts "recklessly" when the person consciously
13 disregards a substantial and unjustifiable risk that the person's conduct will result
14 in serious physical injury and such disregard constitutes a gross deviation from
15 the standard of care that a reasonable person would exercise in the situation.

16 2. The department shall compile and maintain an employee
17 disqualification list in the same manner as the employee disqualification list
18 compiled and maintained by the department pursuant to section 660.315, RSMo.]

2 [660.305. 1. Any person having reasonable cause to believe that a
3 misappropriation of an in-home services client's property or funds, or the
4 falsification of any documents verifying service delivery to the in-home services
5 client has occurred, may report such information to the department.

6 2. For each report the department shall attempt to obtain the names and
7 addresses of the in-home services provider agency, the in-home services
8 employee, the in-home services client, information regarding the nature of the
9 misappropriation or falsification, the name of the complainant, and any other
10 information which might be helpful in an investigation.

11 3. Any in-home services provider agency or in-home services employee
12 who puts to his or her own use or the use of the in-home services provider agency
13 or otherwise diverts from the in-home services client's use any personal property
14 or funds of the in-home services client, or falsifies any documents for service
15 delivery, is guilty of a class A misdemeanor.

16 4. Upon receipt of a report, the department shall immediately initiate an
17 investigation and report information gained from such investigation to
18 appropriate law enforcement authorities.

19 5. If the investigation indicates probable misappropriation of property or
20 funds, or falsification of any documents for service delivery of an in-home
21 services client, the investigator shall refer the complaint together with the
22 investigator's report to the department director or the director's designee for
23 appropriate action.

24 6. Reports shall be confidential, as provided under section 660.320.

25 7. Anyone, except any person participating in or benefiting from the
misappropriation of funds, who makes a report pursuant to this section or who

testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability for making such a report or for testifying except for liability for perjury, unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

8. Within five working days after a report required to be made under this section is received, the person making the report shall be notified in writing of its receipt and of the initiation of the investigation.

9. No person who directs or exercises any authority in an in-home services provider agency shall harass, dismiss or retaliate against an in-home services client or employee because he or she or any member of his or her family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the in-home services provider agency or any in-home services employee which he or she has reasonable cause to believe has been committed or has occurred.

10. The department shall maintain the employee disqualification list and place on the employee disqualification list the names of any persons who are or have been employed by an in-home service provider agency and who have been finally determined by the department to, pursuant to section 660.315, have misappropriated any property or funds, or falsified any documents for service delivery of an in-home services client and who came to be known to the person, directly, or indirectly while employed by an in-home services provider agency.]

[660.320. 1. Reports confidential under section 198.070, RSMo, and sections 660.300 to 660.315 shall not be deemed a public record and shall not be subject to the provisions of section 109.180, RSMo, or chapter 610, RSMo. The name of the complainant or any person mentioned in the reports shall not be disclosed unless:

(1) The complainant, resident or the in-home services client mentioned agrees to disclosure of his or her name;

(2) The department determines that disclosure is necessary in order to prevent further abuse, neglect, misappropriation of property or funds, or falsification of any documents verifying service delivery to an in-home services client;

(3) Release of a name is required for conformance with a lawful subpoena;

(4) Release of a name is required in connection with a review by the administrative hearing commission in accordance with section 198.039, RSMo;

(5) The department determines that release of a name is appropriate when forwarding a report of findings of an investigation to a licensing authority; or

(6) Release of a name is requested by the division of family services for the purpose of licensure under chapter 210, RSMo.

2. The department shall, upon request, provide to the division of employment security within the department of labor and industrial relations

22 copies of the investigative reports that led to an employee being placed on the
23 disqualification list.]
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2 [660.512. No rule or portion of a rule promulgated under the authority of
chapter 210, RSMo, shall become effective unless it has been promulgated
3 pursuant to the provisions of section 536.024, RSMo.]

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